TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1902.

No [illegible] 83.

GEORGE H. EARLE, JUNIOR, RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, PLAINTIFF IN ERROR,

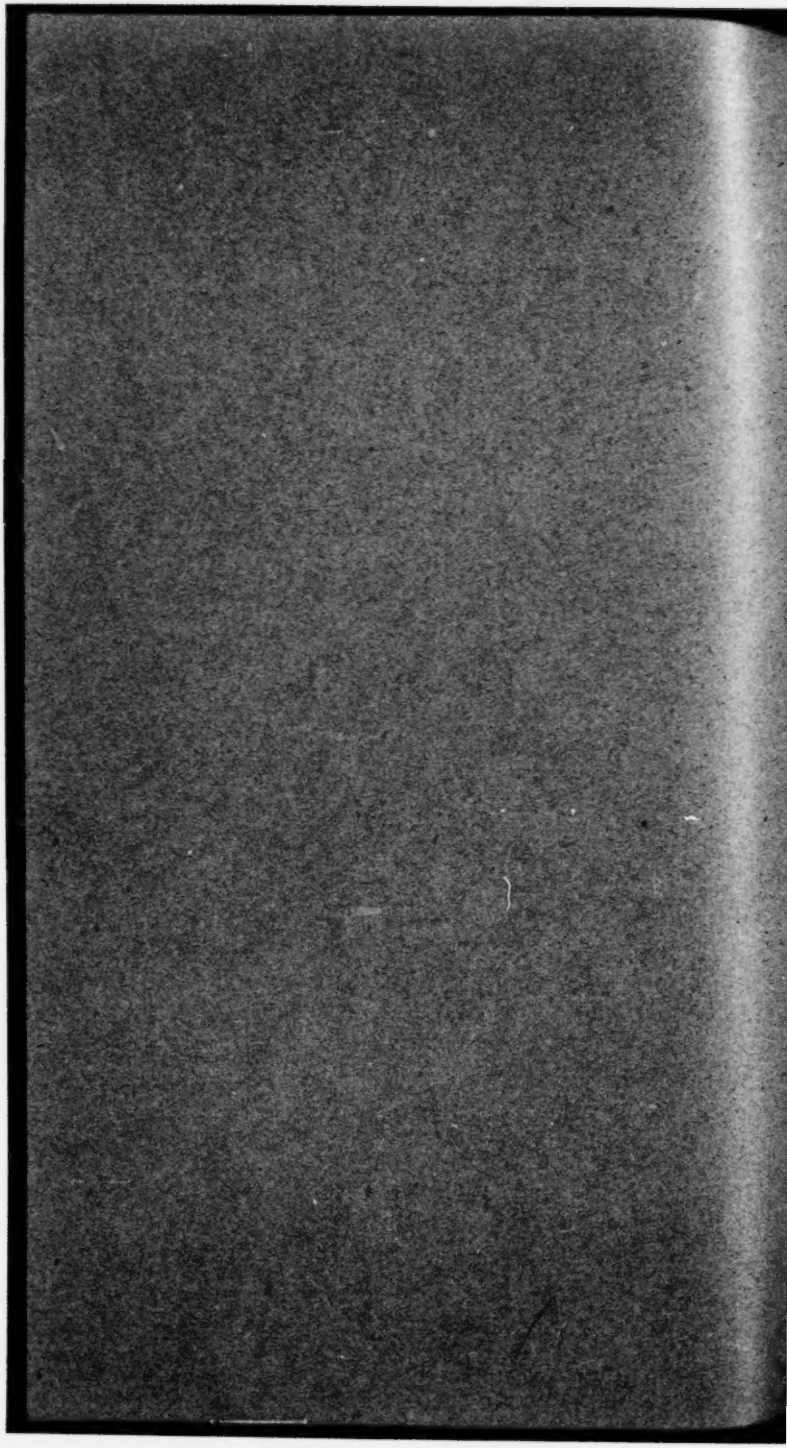
vs.

SUSAN CARSON.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED APRIL [illegible], 1902.

(18,119.)



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IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

	Page.
Transcript from the circuit court of the United States for the eastern district of Pennsylvania	1
Docket entries	1
Caption	2
Writ of error	2
Citation	3
Præcipe for summons	3
Summons	4
Statement of claim	5
Affidavit of defense	7
Rule to show cause why judgment should not be entered for want of a sufficient affidavit of defense	8
Withdrawal of rule to enter judgment, etc	9
Rule to plead	9
Plea	10
Appearance	10
Jury and verdict	10

Page

Bill of exceptions 11
Statement of proceedings 11
Evidence for plaintiff 13
Testimony of Howard E. Young 13
G. Asheton Carson 14
Howard E. Young (recalled) 16
Books offered 21
Plaintiff rests 21
Motion for nonsuit 21
Evidence for defendants 22
Testimony of Wm. Steele 22
Hampton L. Carson 36
Edward L. Maguire 41
Defendants rest 44
Evidence for plaintiff in rebuttal 44
Testimony of Geo. H. Earle, Jr 44
Testimony closed 44
Charge of the court 45
Judge's certificate to bill of exceptions 51
Motion and reasons for new trial 52
Order and agreement to extend time for motion for a new trial and appeal 53
Argued surmotion for new trial 54
Order discharging rule for new trial 54
Petition for writ of error and allowance 55
Assignments of error 56
Bond surwrit of error 59
Agreement of counsel as to writ of error 60
Clerk's certificate 61
Stipulation as to exhibits 61
Certificate of stock of Anne C. Carson 62
Certificate of stock of Susan Carson 63
Certificate of stock of Hampton L. Carson 64
Order taking cause under advisement 65
Opinion 65
Judgment 69
Order for mandate 70
Mandate 71
Petition for writ of error 71
Assignment of errors 73
Bond on writ of error 77
Writ of error 78
Citation and service 78
Clerk's certificate 79

APRIL SESSIONS, 1898. (1)

Charles Biddle,
W. H. Addicks,
Asa W. Waters,

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank of Philadelphia,

vs.

SUSAN CARSON.

Richard C. Dale.

Assumpsit.

May 21, 1898. Praecipe for summons filed. Summons exit returnable first Monday of June next.

May 24, 1898. Summons returned. Service accepted.

May 24, 1898. Richard C. Dale, Esq., enters his appearance for defendant.

May 27, 1898. Statement of plaintiff's claim filed.

June 14, 1898. Affidavit of defence filed.

June 29, 1898. Rule for judgment for want of a sufficient affidavit of defence filed.

September 2, 1899. Rule for judgment withdrawn and rule to plead filed.

September 11, 1899. Plea filed.

March 8, 1900. Charles Biddle, Esq., appears for plaintiff.

April 9, 1900. And now, to wit, a jury being called, come to wit (see minutes).

April 10, 1900. And the jurors aforesaid, upon their oaths and affirmations aforesaid, respectively do say that they find for defendant.

April 18, 1900. Motion and reasons for new trial filed. Order and (2)
agreement to extend time for motion for a new trial and appeal filed.

May 7, 1900. Argued sur motion for new trial.

May 7, 1900. Bill of exceptions filed.

May 29, 1900. Rule for new trial discharged.

May 30, 1900. Order to enter judgment filed. Judgment accordingly.

June 13, 1900. Petition for writ of error allowed and filed.

June 13, 1900. Writ of error issued and copy thereof lodged in Clerk's office for adverse party.

June 13, 1900. Assignments of error filed.

June 13, 1900. Bond sur writ of error approved and filed.

June 13, 1900. Citation allowed and issued.

June 25, 1900. Citation returned service accepted.

(3) IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA, IN THE THIRD CIRCUIT.

No. 37. April Session, 1898.

GEORGE H. EARLE, Receiver,

vs.

SUSAN CARSON.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *scl.*

Pleas in proceedings before the Honorable the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the Third Circuit of April Session, 1898, No. 37.

Be it remembered that on the 21st day of May, 1898, the plaintiff, by his counsel, comes into our Court here and sues forth a writ of summons against defendant, which, with the endorsement returned thereto, is in the words and figures following, to wit:

(4) UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES.

To the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between George H. Earle, Jr., Receiver, is plaintiff, and Susan Carson, defendant, a manifest error hath happened, to the great damage of the said George H. Earle, Jr., Receiver, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 13th day of June, in the year of our Lord one thousand nine hundred.

SAMUEL BELL,
Clerk of the Circuit Court of the United States.

Allowed by
GEO. M. DALLAS,
Circuit Judge.

UNITED STATES OF AMERICA, *ss.* (5)

THE PRESIDENT OF THE UNITED STATES.

To Susan Carson, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States, Eastern District of Pennsylvania, wherein George H. Earle, Jr., Receiver, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George M. Dallas, Judge of the Circuit Court of the United States, this 13th day of June, in the year of our Lord one thousand nine hundred.

GEO. M. DALLAS,
Circuit Judge.

Service accepted,
RICHARD C. DALE,
Attorney for Plaintiff.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR (6)
THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1898. No.

GEORGE H. EARLE, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff,

vs.

SUSAN CARSON, Defendant.

PRAECIPE.

Issue summons in assumpsit returnable sec. leg.

W. H. Addicks and Asa W. Waters, Attorneys for Plaintiff, May 21, 1898.

Endorsed: No. 37, April Sess., 1898. U. S. Circuit Court, E. D. of Penna. George H. Earle, Jr., Receiver, etc., vs. Susan Carson. Praecipe. W. H. Addicks and Asa Waters, Attorneys for Plaintiff. Filed May 21, 1898. Samuel Bell, Clerk, per G. B., Jr.

(7) UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA, } *sct.*

THE PRESIDENT OF THE UNITED STATES.

To the Marshal of the Eastern District of Pennsylvania, greeting:

We command you that you summon Susan Carson, late of your district, if she may be found therein, so that she be and appear before the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, of the Third Circuit, at a session of the same Court to be holden at Philadelphia, on the first Monday of June next, to answer to George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, in the plea of assumpsit, and have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at Philadelphia, this 21st day of May, A. D. 1898, and in the 122d year of the Independence of the United States.

[Seal.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.
Per G. B., Jr.

(8) I herewith accept service of the within writ and direct the Clerk of the Court to enter my apearance for Susan Carson, the within defendant.

RICHARD C. DALE,
Attorney for Defendant.
5, 23, 1898.

Endorsed: No. 37. Circuit Court, April Session, 1898. Earle Jr., Receiver, vs. Carson. Summons Assumpsit. Filed May 24, 1898. Samuel Bell, Clerk. Returnable on the first Monday of June next. W. H. Addicks, Asa W. Waters, Attorneys for Plaintiff.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN (9)
AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 37. April Session, 1898.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

IN ASSUMPSIT.

STATEMENT OF PLAINTIFF'S CLAIM.

The Chestnut Street National Bank, located in Philadelphia, in the Eastern District of Pennsylvania, was duly incorporated and organized, and prior to December 23, 1897, transacted a banking business under the laws of the United States, as a National Banking Association, but on said last named day failed and suspended payment of its obligations, and was thereupon by order of the Comptroller of the Currency of the United States declared insolvent, and thereafter, on January 29, 1898, the said George H. Earle, Jr., was lawfully appointed by said Comptroller of the Currency Receiver thereof, and was duly qualified as such, and is now administering the duties of his trust, and as such Receiver brings this action.

That there is due and owing by Chestnut Street National Bank (10)
contracts, debts and engagements to its creditors which the assets and credits of said banking association are wholly insufficient to pay and discharge, and it has become necessary in order to pay and discharge said contracts, debts and engagements, to enforce the liability of the shareholders of the capital stock of said Chestnut Street National Bank, as provided by Sections 5151 and 5234 of the Revised Statutes of the United States, that therefore the Comptroller of the Currency, who is by law charged with that duty, after having ascertained, determined and decided that in order to pay said contracts, debts and engagements of said banking association, an assessment of one hundred (100) per centum upon the par value of each share of the capital stock of said Chestnut Street National Bank is necessary, made an order in writing to that effect, directed to the plaintiff herein, making said assessment payable April 1, 1898, and pursuant to said order, the plaintiff notified each and every shareholder and demanded payment thereof.

That the capital stock of said association is five hundred thousand (500,000) dollars, divided into five thousand (5,000) shares of the

par value of one hundred (100) dollars each, and long prior to the said 23d day of December, 1897, there was issued to and in the name
(11) of said defendant, Susan Carson, and she is the owner for the purposes of said assessment of ten (10) shares of the capital stock of said Chestnut Street National Bank, and is liable under the law of the United States to pay the assessment of one hundred (100) per centum thereon, or one thousand (1,000) dollars, with interest at six per centum per annum from April 1, 1898, the date the same is payable, by order of the Comptroller of the Currency, and that said defendant, although often requested, has utterly neglected and refused to pay said one thousand (1,000) dollars, or any part thereof, and plaintiff says that as such Receiver, it is his duty under the direction of the Comptroller of the Currency to proceed to the collection of said assessment, and says the defendant, Susan Carson, is indebted to him as aforesaid, for the purposes aforesaid, in the sum of one thousand (1,000) dollars, with interest at six per centum per annum (as damages for the detention thereof from April 1, 1898, and therefore he brings this suit, and for said sum of one thousand (1,000) dollars and interest thereon as aforesaid, he asks judgment with costs.

W. H. ADDICKS,
ASA W. WATERS,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } ss.

George H. Earle, Jr., being first duly affirmed according to law,
(12) deposes and says that he is Receiver of the Chestnut Street National Bank by appointment of the Comptroller of the Currency, and as such is plaintiff in the above named action, and that the facts set forth in the foregoing statement are true, to the best of his knowledge, information and belief.

GEORGE H. EARLE, JR.

Affirmed to and subscribed before me this 26th day of May, A. D. 1898.

H. G. HART,
Notary Public.

Commission expires January 19, 1901.

[Seal.]

Endorsed: No. 37, April Session, 1898. C. C. of U. S., E. D. of Pa. Earle, Receiver, vs. Susan Carson. Statement of Plaintiff's Claim. Filed May 27, 1898. Samuel Bell, Clerk R. W. H. Addicks, Asa W. Waters.

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (13)

No. 37. April Session, 1898.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON

IN ASSUMPSIT.

AFFIDAVIT OF DEFENCE.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF PHILADELPHIA, }

Susan Carson, being duly sworn according to law, doth depose and say: I am the defendant in the above entitled case; I have a full, just and complete defence to the whole of plaintiff's demand of the following nature and character, to wit:

I was not a stockholder of the Chestnut Street National Bank at the time of the insolvency of said bank. Some time prior thereto I had been a stockholder, the full history of my ownership of said shares being as follows:

My uncle, Henry Carson, of the City of Philadelphia, had been a shareholder in said bank for many years prior to his death. He died in the month of July, 1896. Under the provisions of his will I received in the month of November, 1896, a certificate for ten shares (14) of the capital stock of said bank, and I continued to be the owner of the same until the month of November, 1897, when I was advised by my brother, Hampton L. Carson, upon whom I rely for advice in the care of my property, that said investment was not of a character which I should hold. Acting upon his advice, but with no knowledge, information or suspicion that the Chestnut Street National Bank was insolvent, or in any manner embarrassed, on about the 30th day of November, 1897, I caused said ten shares to be advertised for sale at public auction at the public auction sale of M. Thomas & Sons, in the City of Philadelphia, and at said public auction held on that day, said shares were sold by public auction for the price of $100 per share, being the par value thereof. I had no knowledge at that time who was the purchaser, but delivered said shares with the usual power of attorney to make transfer of the same to

the said auctioneers, who in regular course of business, on the 2d day of December, 1897, received from the purchaser the price thereof and paid me the purchase price less the usual commissions for sale. I am informed by the said auctioneers that in fact the purchaser was William M. Singerly, then the President of said Chestnut Street National Bank, and that they delivered the certificate for said shares with the power to transfer the same to William Steele, the Cashier
(15) of said bank, for the purpose of making transfer of said shares on the books of the bank, and that at the time of said delivery it was understood between them and the said Steele that said transfer was forthwith to be made. Since the appointment of the Receiver of said bank I have been informed that the said Singerly and said Steele in fraud of my rights in the premises failed to make the proper entries of transfer on the books of said bank; but having sold said shares in good faith, with no knowledge or suspicion of the insolvency or approaching insolvency or embarrassment of said bank, and having delivered the certificates for transfer, with the proper powers, to an officer of the bank, in order that the same might be transferred, and having had no knowledge of the neglect of the officers of said bank to perform their duties in the premises until after the appointment of the Receiver of said bank, I am advised by counsel that I am under no liability in the premises.

SUSAN CARSON.

Sworn and subscribed to before me
this 11th day of June, 1898.

HENRY RAINEY,
[Seal.] Notary Public.

(16) Endorsed: No. 37, April Sessions, 1898. U. S. Circuit Court. George H. Earle, Jr., Receiver, vs. Susan Carson. Affidavit of Defence. Filed June 4, 1898. Samuel Bell, Clerk, per G. B., Jr. R. C. Dale.

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(17) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 37. April Sessions, 1898.

GEORGE H. EARLE, JR., Receiver of Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

IN ASSUMPSIT.

And now, June 29, 1898, on motion of Asa W. Waters, Esq., and W. H. Addicks, Esq., Plaintiff's Attorneys, rule on defendant to show cause why judgment should not be entered for want of a sufficient affidavit of defence.

Returnable Tuesday, July 5, 1898.

Endorsed: No. 37, April Sessions, 1898. U. S. C. C. E. D. of Pa. Earle, Jr., Receiver, vs. Susan Carson. Rule for Judgment. Asa W. Waters, W. H. Addicks. Filed June 29, 1898, Samuel Bell, Clerk, per G. B., Jr.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (18)

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

IN ASSUMPSIT.

April Session, 1898. No. 37.

RULE TO PLEAD.

To the Clerk of the above named Court:

Sir: Please withdraw the rule for judgment for want of affidavit of defence and enter rule on defendant to plead in 15 days or judgment sec. reg.

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff.

Endorsed: No. 37. April Sess., 1898. U. S. C. C. E. D. of Pa. In Assumpsit. George H. Earle, Jr., Receiver of the Chestnut Street Nat'l Bank, vs. Susan Carson. Withdrawal of Rule for Judgment for want of affidavit of defence and rule to plead. Asa W. Waters, W. H. Addicks, Attorneys for Plaintiff. Filed Sep. 2, 1889. Samuel Bell, Clerk, H. R.

(19) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON.

April Session, 1898. No. 37.

To the Clerk of the U. S. C. Court :

The defendant in the above entitled case pleads non assumpsit.

R. C. DALE,
Attorney for Defendant.

Endorsed: 37. U. S. C. C. April Sess. 1898. Earle, Receiver, vs. Susan Carson. Plea. R. C. Dale. Filed Sep. 11, 1899. Samuel Bell, H. R.

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(20) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

GEORGE H. EARLE, JR., Receiver,

vs.

SUSAN CARSON.

April Term, 1898. No. 37.

Please enter my appearance in the above case for the plaintiff, George H. Earle, Jr., Receiver of the Chestnut Street National Bank.

CHARLES BIDDLE.

March 6th, 1900.

Endorsed: U. S. C. C., E. D. of Pa. No. 37. April Term, 1898. George H. Earle, Jr., Receiver, vs. Susan Carson. Appearance of Charles Biddle. Filed Mar. 8 1900. Samuel Bell, Clerk.

(21) And afterwards, to wit: on the 9th day of April, 1900, the Jury being called come, to wit: John C. Rowland, Oliver P. Smith, Robert Depew, Jeremiah G. Barton, George Fritz, Harrison S. Puterbaugh, James B. McLean, J. H. Redsecker, Harry Rogers, Charles Esrey,

Adolph H. Kretz, John H. La Rue, who are duly empanelled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit: on the 10th day of April, 1900, the jurors aforesaid upon their oaths or affirmations aforesaid, respectively do say that they find for Defendant.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (22)

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

IN ASSUMPSIT.

No. 37 of April Sess. '98.

SAME

vs.

ANNIE C. CARSON.

IN ASSUMPSIT.

No. 38 April Sess. 1898.

SAME

vs.

HAMPTON L. CARSON.

IN ASSUMPSIT.

No. 39 April Sess. 1898.

Be it remembered, That in the said term of April Session, 1898, came the said plaintiff into the said Court, and impleaded the said defendant in a certain plea of assumpsit, &c., in which the said plaintiff declared (prout narr.) and the said defendant pleaded (prout pleas). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said Court, held at Philadelphia in the District aforesaid before the Honorable George M. Dallas,

Judge of the said Court, the ninth day of April, 1900, the aforesaid issue between the said parties came to be tried by a Jury of the said District for that purpose duly impanelled (prout list of Jurors), at which day came as well the said plaintiff as the said defendant, by
(23) their respective attorneys, and the jurors of the Jury aforesaid impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiff and defendant stated to the Court that it is admitted that the Chestnut Street National Bank was duly incorporated and organized under the laws of the United States as a national banking association; that it transacted a banking business in the city of Philadelphia, in said Eastern District of Pennsylvania, until December 23, 1897, when suspending payment of its obligations, it was declared insolvent by the Comptroller of the Currency, and that on January 29, 1898, George H. Earle, Jr., was appointed by the said Comptroller under the laws of the United States, receiver of said bank, and as such, by direction of the said Comptroller, is plaintiff in these actions in assumpsit; and that on or about April 1, 1898, the said Comptroller finding it necessary, ordered an assessment of 100 per cent. of the par value of the capital stock of said Bank, and ordered the plaintiff, in writing, to collect the same equally and ratably from each and every stockholder of said bank, as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States; and thereupon counsel for said plaintiff offered the witnesses, books and papers in manner and form as herein set forth and
(24) did then and there except to the rulings of the Court, make the admissions and rest as herein set forth. And thereupon counsel for said defendant, after moving for nonsuit, which motion was overruled by the Court, offered the witnesses, books and papers in manner and form as herein set forth; and did then and there except to the rulings of the Court, make the admissions and rest as herein set forth; and thereupon counsel for said plaintiff offered rebutting evidence, and excepted to the rulings of the Court as is herein set forth. The testimony was then closed and the Court proceeded to charge the jury as set forth herein.

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(25) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sess. 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

April Sess. 1898. No. 38.

SAME

vs.

ANNIE C. CARSON.

April Sess. 1898. No. 39.

SAME

vs.

HAMPTON L. CARSON.

Philadelphia, April 9th, 1900.

Messrs. Biddle & Waters for Plaintiff; R. C. Dale, Esq., for Defendants.

HON. GEO. M. DALLAS, J.

(It is admitted that Mr. Earle has been appointed the receiver of the Chestnut Street National Bank, and that the Comptroller of the Currency has made an assessment of 100 per cent. upon the bank stock.)

HOWARD E. YOUNG, Sworn.

By Mr. Biddle:

Q. What is your position in the Chestnut Street Bank?

A. I represent the receiver, and have charge of his books of ac- (26)
count, and also have custody of the assets.

Q. Have you there the stock certificate book of the Chestnut Street National Bank?

A. I have. (Book produced.)

Q. Is that it?

A. It is.

Q. Will you turn to the certificate stub issued to Susan Carson and tell us how many shares she holds.

(Objected to by Mr. Dale.)

Q. Is that the book?

A. This is the certificate book; yes, sir.

Q. Will you turn to the certificate stubs and mark them there so that I can get them, of the three defendants here, Susan Carson, Annie C. Carson and Hampton L. Carson?

(The witness does as requested.)

Mr. Biddle: I offer this book in evidence.

(Objected to. Objection sustained for the present, without prejudice to the right of the plaintiff to re-offer.)

Cross-Examination.

By Mr. Dale:

Q. Where are the certificates which were torn off these stubs?

(Objected to. Objection sustained.)

(27) G. ASHETON CARSON, Sworn.

By Mr. Biddle:

Q. Have you looked at these signatures? (Indicating on book.)

A. Yes, sir.

Q. Can you tell me whose they are?

A. They are my signatures.

Q. Did you receive on September 29th, 1896, ten shares of stock of the Chestnut Street National Bank for Annie C. Carson?

A. I did.

Q. Did you receive ten shares of stock for Susan Carson?

A. I did.

Q. Did you receive ten shares of stock for Hampton L. Carson?

A. I did.

Q. Were you acting as their agent when you signed these receipts for that stock?

A. I received the stock as an executor of an estate and distributed them. The stock was left by Henry Carson, an uncle of these people, and I was the executor, and I transferred the stock to them, and I receipted for it, and I gave it to the people named in the book.

Q. You gave ten shares of this stock to Annie C. Carson?

A. I did.

Q. And to Susan Carson?

A. I did.

Q. And Hampton L. Carson?

A. Yes, sir.

Q. And they received it from you?

A. They did.

Q. These certificates, of course, were in the names of the various parties?

A. They were.

Q. And they received the dividends from that day until the bank closed, did they not?

A. I know nothing about the dividends, because I gave them the stock. That is as far as I went in the matter.

Cross-Examination.

By Mr. Dale:

Q. I understand you acted in this matter as the Executor of the estate of Henry Carson?

A. I did.

Q. Who had been the owner of the shares theretofore?

A. He had, yes.

Q. And you, as his executor, made certain transfers to his nephews and nieces?

A. I did.

Q. Who were entitled to receive these shares under the will of Mr. Henry Carson?

A. Yes, sir.

Q. You made certain transfers on the books of the Chestnut Street (28) Bank?

A. I don't know whether I made them on the books or whether I made them on the certificates. That I can't say.

Q. On the date here specified, to wit: September 29, 1896, some officer of the Chestnut Street Bank handed to you three certificates for ten shares each, made out in the names of Hampton L. Carson, Annie C. Carson and Susan Carson?

A. Yes, sir; and Steele was the man who handed them to me.

Q. Mr. Steele, the cashier of the bank, handed them to you?

A. Yes, sir; he did.

Q. And these particular pieces of paper you handed to the parties entitled to receive them?

A. Yes, sir; and took their receipt for them.

By Mr. Biddle:

Q. Have you got those receipts?

A. Yes, in my pocket.

Q. Produce them.

(Receipts produced.)

Mr. Biddle: I offer in evidence the three receipts of the three defendants for the respective shares of stock given to them by Mr. G. Asheton Carson.

I also offer in evidence the receipts of Mr. G. Asheton Carson to the bank for the respective shares of stock, the certificates for which he delivered to the three defendants.

(The latter offer is objected to, and Mr. Dale asks permission to
(29) cross-examine the witness, Young, by whom the book was produced and identified as the Stock Receipt Book of the Chestnut Street National Bank, as to the present whereabouts, if he knows, of the certificates referred to in the stubs.)

(The permission to cross-examine is refused. Exception for defendants.)

Mr. Biddle: I offer the affidavits of defence in the three cases in evidence.

(Mr. Biddle withdrew the offer of the affidavits of defence in evidence.)

HOWARD E. YOUNG, re-called.

By Mr. Biddle:

Q. Have you got the book here showing the receipts for the payment of dividends from 1896 until the time of the failure of the bank?

A. I have not.

Q. Can you produce those receipts?

A. I cannot. I think they did not take receipts; they mailed checks.

Q. Can you produce those checks?

A. I cannot.

Q. Where are they?

A. I don't know. I did not know they were wanted or I would have looked for them. I have never seen them.

(30) Q. Have you got the transfer book of the Chestnut Street National Bank?

(Book produced.)

Q. Will you look at that and see if there appears to be any transfer of the shares of Susan Carson, Annie C. Carson and Hampton L. Carson?

Mr. Dale: Is the purpose of the question to show that these defendants continued to be stockholders down to the time of the insolvency of the bank?

Mr. Biddle: Yes.

Q. Do you find on that transfer book any evidence of the stock of the three defendants ever having been transferred?

A. I do not.

Q. Then, as I understand it, they appear as stockholders upon the books of the bank up to the day of its closing?

A. Yes, sir.

Cross-Examination.

By Mr. Dale:

Q. When you said that they appeared upon the books of the bank as stockholders until the day of its closing, what books did you refer to?

A. The transfer book and stockholders' ledger.

Q. I understood you to say that on that transfer book you found no entry at all?

A. There is no entry of their having been transferred.

Q. Therefore there is no entry on the transfer book relating (31) to the subject?

A. As to this transfer; no, sir.

Q. Have you the stock ledger there?

A. Yes, sir.

Q. Please produce it.

(Book produced.)

Q. Will you please refer to the entry relating to these three certificates of stock? Will you read any entry in the stock ledger showing anything relating to the ownership of stock by any of these three defendants?

A. I find on page 54 of the stock ledger of the Chestnut Street National Bank an account opened with Annie C. Carson, No. 426 Drexel Building, and the entry is: "1896, September 28, by Henry Carson, ten shares." The number of the certificate issued is 463.

Q. What do you find with reference to the other defendants, Susan and Hampton L.?

A. On page 56 of the stock ledger I find an account opened with Susan Carson, Room 426 Drexel Building, and the entry is: "1896, September 28, by Henry Carson, ten shares." Certificate issued No. 464 for ten shares. On page 57 of the stock ledger I find an account opened with Hampton L. Carson, 426 Drexel Building, and the entry is: "1896, September 28, by Henry Carson, ten shares." Certificate issued No. 465 for ten shares.

By the Court:

Q. That was all Henry Carson's stock, was it?

A. Yes, sir; it was a transfer from him. (32)

By Mr. Dale:

Q. Please open the transfer book which you referred to.

(The witness does as requested.)

Q. You say you have looked over that transfer book from Septem-

ber, 1896, until the closing of the bank, and you do not find any entries there as to these three defendants?

A. No, sir.

Q. I want to ask you whether this transfer book contains a true record of all shares presented to your company for transfer from September, 1896, until the closing of the bank?

A. I don't know anything about the book. I never had anything to do with it before the failure of the institution.

Q. Who had?

A. The cashier, I would say, from the writing.

Q. Is it not a fact that there came into your possession after the insolvency of the bank a large number of certificates which had been left with the bank for transfer, with properly executed powers, of which no record was made in that book?

(Objected to. Objection overruled. Exception for plaintiff.)

A. I received a number of certificates on behalf of the Receiver, which represented money, having been paid for out of the bank's funds.

Q. Was any transfer made of those certificates on the books of the bank?

(34) A. No, sir.

Q. Among the certificates which you thus received, did you find the three certificates made out in the names of the three defendants?

A. I did.

Q. Where are they?

A. I have them.

(Witness produces three certificates numbered respectively 463, 464 and 465, made out in the name of Annie C. Carson, Susan Carson and Hampton L. Carson, respectively, bearing date September 28, 1896, for ten shares. The witness also produces, pinned to each certificate, an irrevocable bill of sale and power to transfer, bearing date, in the case of Annie C. Carson, December 2, 1897; in the case of Hampton L. Carson, November 27, 1896, and in the case of Susan Carson, December 3, 1897, the signature in each case on the face of the power being guaranteed by Townsend, Whelen & Co.)

Q. Where did you find these papers?

A. Mr. Steele, the cashier, gave them to me.

Q. When?

A. I don't know the exact date. It was a few days after the Examiner in charge had turned the assets over to the Receiver.

Q. About when was that?

A. About the 10th of 12th of February, 1898.

Q. That was the first time you ever saw these papers? (35)

A. Yes, sir.

Q. They were then handed to you by Mr. Steele, who was the cashier at that time?

(Objected to.)

By Mr. Biddle:

Q. At the time he handed you these was he cashier?

A. The bank had failed at that time.

By Mr. Dale:

Q. Did not Mr. Steele continue to be cashier for some months after the failure of the bank?

A. That I do not know. I don't know the law on that.

Q. Don't you know he continued to act for the Receiver as cashier for some time?

A. He continued to be the clerk of the Receiver.

Q. And at the time he handed these to you he was acting as clerk for the Receiver?

A. Yes, sir.

Q. Is there anything on the face of these papers to show that Mr. Steele had any interest or relation to the matter except as cashier of the bank he signed the certificates?

A. No, sir.

Q. And he produced them from among the books and papers and archives of the bank?

A. May I be permitted to make an explanation?

Q. Answer the question and then make any explanation you wish? (36)

A. I would like to state how I came to get them.

Q. Answer the question which I put to you, and then you can make any explanation you wish?

A. I don't know where he got them from.

Q. Where was it that he handed them to you?

A. At the office of the bank, No. 721, I think is the number, Chestnut street.

Q. It was in the office of the bank?

A. Yes, sir.

Q. And in connection with the production of other books and papers of the bank they were handed to you?

A. He handed me those. If I could make an explanation of this I think I could make it clear.

Mr. Biddle: Give your explanation.

The Witness: When the Examiner in charge turned the assets over to the Receiver of the Chestnut Street National Bank, in which I acted for the Receiver subsequently, among other matters he handed to me a receipted bill of auctioneers representing thirty shares of stock of the Chestnut Street National Bank. (Paper produced.)

(Objected to by Mr. Dale.)

By Mr. Biddle:

Q. What is the paper?

(37) A. I think I stated that the Examiner in charge turned over this paper among other matters.

The Court: The paper is not offered, and it must not be read until it is formally offered.

By Mr. Dale:

Q. You were acting officially in receiving these papers?

A. Yes, sir.

Q. What was your position with the Receiver? Clerk or custodian, or what?

A. I was never given any title.

Q. You were an employee of the Receiver?

A. Yes, sir.

Q. Without going over the details of whose certificates they were, I ask you this question, were there not also handed over to you at or about the same time a considerable number of other certificates of persons who had been stockholders of the bank, whose certificates were in the office of the bank with proper powers to transfer, which had remained untransferred, this question being asked solely for the purpose of impeaching the credibility of the evidence deduced from the statement of the witness that no transfer of the shares of these defendants is found in the transfer book?

(Objected to. Objection overruled. Exception for plaintiff.)

A. There were a number of certificates handed to me by Mr. Steele with properly executed transfers attached.

(38) Q. Some of them ran back to dates many months anterior to this?

A. I don't know about that.

Q. You never had occasion to examine that?

A. No, sir.

Q. In the cases where these certificates were in the possession of the bank and were thus handed to you, where there was a failure to enter a transfer in the transfer book, there was also a failure to note the transfer on the stock ledger, of course?

(Objected to. Question withdrawn.)

Q. In the cases of these certificates handed to you as the employee of the Receiver by Mr. Steele, the cashier of the bank, where the transfer was not noted on the transfer book, no entry of the transfer was made on the stock ledger?

A. I have shown you the transfer book and the stock ledger, and they do not show any entries.

Q. There was a considerable number of certificates which came into your possession as an employee of the Receiver with proper power of attorney and bills of sale annexed, where no transfers were noted either on the transfer book or on the stock ledger?

A. Yes.

Q. And you say you have no knowledge of how these certificates came into the possession of Mr. Steele, the cashier, prior to his handing them to you?

A. I have no personal knowledge. (39)

Mr. Biddle: I offer in evidence the stock ledger and the stock transfer book.

(Mr. Dale objects to the offer of the books to prove the fact for which they are offered, when the witness who produced them stated that they did not contain a record of the transfers of the certificates which were in the possession of the cashier.)

The Court: I will receive the books provisionally, and the question of their effect, or whether they are entitled to any effect will be passed upon at the final stage by the Court.

Plaintiff rests.

Motion for non-suit.

Court adjourned until Tuesday, April 10, 1900, at 10 A. M.

(40) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sess. 1898. No. 44.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

G. ASSHETON CARSON.

Deposition of William Steele, taken by C. H. Guilbert, Notary Public, at the Eastern Penitentiary in the city of Philadelphia, on Thursday, March 29, 1900, at 12 M., pursuant to the order of the Court, dated March 22, 1900, a copy of which is attached hereto.

Present: Charles Biddle, Esq., for plaintiff; John Hampton Barnes, Esq., for defendant; Hazard Dickson, Esq., representing parties in interest.

WILLIAM STEELE, having been duly sworn, was examined as follows:

By Mr. Barnes:

Q. What was your position in the Chestnut Street National Bank in 1897?

A. Cashier.

Q. Who was the president of the bank?

A. William M. Singerly.

(41) Q. Did you in November or December of 1897 purchase at public sale at Barnes & Lofland certain shares of stock belonging to G. Assheton Carson, George C. Carson and Elizabeth C. Brown, of the Chestnut Street National Bank?

A. I could not answer without seeing the certificates. I can give you a general explanation if that will cover the case. All the certificates of stock held by the receiver of the Chestnut Street National Bank in the names of G. Assheton Carson, George C. Carson and Elizabeth C. Brown I do not know whether it was bought at Barnes & Lofland's, or M. Thomas & Sons', but it was bought for Mr. Singerly and was held by the bank.

Q. Did you go to the auctioneer's and make the bid yourself?

A. No. It was customary, when any of that stock was offered for sale on the market, they would send a postal card to the bank and also

to Mr. Singerly. Whether each of the directors received a postal card I do not know. Mr. Singerly would come to me and say to me, "Mr. Steele, you had better bid for that stock." I would ask him what price. He would give me his price; I would go to the 'phone, or get one of the young men to go to the 'phone; telephone to Barnes & Lofland or M. Thomas & Sons that I had a bid for so many shares of stock offered for sale on that day, or whenever it was to be. If the stock was bought for Mr. Singerly, it was delivered to the bank by the auctioneers and we gave him the bank due bill for it. I would then make (42) out a new certificate of stock in the name of William M. Singerly, take it to the Chestnut Street Trust Company, have it registered, and then they would make a loan on that stock to Mr. Singerly. The Chestnut Street Trust Company paid me for that stock.

Q. Did you buy any of the stock standing in the name of the persons named for your own account?

A. No, sir. Not any of that stock.

Q. None of the stock of G. Assheton Carson, George C. Carson or Mrs. Elizabeth C. Brown?

A. No, sir.

Q. Did you or did you not buy that stock for Mr. Singerly?

A. Yes, sir. As we bought hundreds and hundreds of shares of stock in the same manner.

Q. As I understand your testimony, it was paid for by money borrowed from the bank for Mr. Singerly's account?

A. No; the money was not borrowed from the bank. We merely gave them a bank due bill just temporarily until we got the money from the Chestnut Street Trust Company.

Q. Were the certificates of the stock delivered by the auctioneers?

A. Yes, sir.

Q. Was or was not any power of attorney to transfer the stock at- (43) tached to the certificates of stock?

A. There were either attached to the certificates of stock, or else endorsed on the back of the certificates.

Q. What was done with the certificates after you received them?

A. Do you mean those special certificates?

Q. Yes.

A. I generally handed them over to the paying teller, or probably kept them myself. That is, kept them in my sundry papers, &c. He would have a bill for the sale which he would have to show, and sometimes he would have the certificates, and sometimes probably I would have it.

Q. By your papers do you mean your personal papers or your papers as cashier of the bank?

A. The bank's papers. Probably lying on my desk at the time.

Q. Was any request made to you to transfer the stock upon the books of the bank when the certificate was delivered to you?

A. I have not any recollection of any such request.

Q. Was it or was it not your duty to make such transfers?

A. Yes, sir. It was my duty to transfer the stock.

Q. Why were not the transfers in this case made?

(44) A. That is a question that I cannot give you a satisfactory answer to. There was no reason why they were not transferred. Carelessness, probably. I would like to state that when that stock was delivered, as I say hundreds and hundreds of other shares of stock were, sometimes I would make out a new certificate on the day of the delivery or probably they would lie there two or three days.

Q. To whom should the stock above referred to as belonging to G. Assheton Carson, George C. Carson and Elizabeth C. Brown have been transferred?

A. To William M. Singerly.

Cross-Examination.

By Mr. Biddle:

As I understand you, you do not recollect anything about the particular stock of Mrs. Brown or the Carsons, but you are merely giving us a statement as to what was generally done when Mr. Singerly purchased stock?

A. I am speaking now of the stock that the receiver is bringing suit on to recover the assessment, I think, on the stock.

Q. You are referring to all of that stock and you are not now giving your recollection as to any particular stock, are you?

A. That refers to that stock—I think the stock originally was in the name of George Carson, Mr. Hampton Carson's father, and then
(45) it was divided up—there were quite a number, G. Assheton Carson, M. Hampton Carson and Mrs. Brown, four or five or six certificates, if I recollect aright. I cannot recall just now. All that stock of the Carsons and Brown was bought for Mr. Singerly.

Q. Do you remember when this stock was brought to you by the auctioneer?

A. No; I cannot answer that.

Q. I mean this particular stock, the Brown and Carson stock.

A. Yes.

Q. Do you mean the date?

A. No, sir.

Q. Do you recall any conversation which you had with the auctioneer at the time he brought this stock to you?

A. I do not recall any conversation.

Q. Do you recollect, however, as you have told us, that no request was made by the auctioneer to have this stock transferred?

A. I have no recollection of any; no, sir

Q. Have you no recollection of such request?

A. No, sir.

Q. You have told us here that this stock was delivered to the bank. You mean by that, do you not, that the stock was given to you individually as the purchaser?

A. Of course, they were not under the impression that I was the (46) purchaser of the stock. They were under the impression that the stock was being bought for Mr. Singerly.

Q. How do you know under what impression they were?

A. Because Mr. Lofland quite often came up to see Mr. Singerly and told him that there was some stock for sale and to see him about whether he had a bid to make.

Q. Did they think that this stock was purchased for the bank?

A. Barnes & Lofland?

Q. Yes.

A. No, sir.

Q. It was distinctly understood between you, was it?

A. I do not mean to say that it was distinctly understood. I am satisfied that the auctioneers knew that the stock was being bought for Mr. Singerly.

Q. When they brought the certificates of stock and gave them to you, they gave them to you as the agent for Mr. Singerly?

A. I suppose they would regard it in that way. Had I not been there the bank would have given a due bill; the paying teller or some one would have given a due bill for the stock, because it was quite a customary thing for us to pay for the stock in that way. (47)

Q. I am not asking what they would ordinarily have done. I want to know exactly in what capacity you received this stock. Did not Barnes & Lofland give it to you as the agent for Mr. Singerly, who had purchased the stock?

A. Of course I cannot answer that. I do not know how to answer a question like that.

Q. How did you actually get this stock? Was it brought to you by Mr. Barnes or by Mr. Lofland?

A. I do not know that either one of them brought it. Some one from the office brought it. I think Mr. Barnes' son usually came with the stock.

Q. And handed it to you?

A. Yes, sir.

Q. And said nothing?

A. Yes, sir. Well, nothing with regard to the stock at all.

Q. When you spoke of its being delivered to the bank, that is what you referred to, the transaction which you have now given us?

A. They would bring it to me, being the cashier of the bank.

Q. What do you mean by that? You say they would bring it to you as the cashier of the bank. You do not mean anything of that kind, do you? You mean that they brought it to you as the purchaser of that stock?

(48) A. That question is hardly a fair one to put to me, because I have made my explanation so clear, that that stock was bought for Mr. Singerly, and they so understood it, and when they brought it to me I would give them a bank due bill.

Q. Is it not as I say, that they brought it to you as agent for Mr. Singerly?

(Mr. Barnes objects to the question, as one to be determined from the witness' statement of the occurrence, and not one which the witness can himself determine, being a question of law.)

A. I presume that is the proper way to look at it.

Q. The bank had nothing to do with this purchase, had they?

A. No.

Q. And therefore they gave it to you as the man who purchased this stock?

A. Well, yes. That is about right.

Q. What did you do with the stock after it was delivered to you?

A. That I cannot tell. I could not answer that, because I cannot recall any particular stock. It was customary when the stock was bought —I would sometimes give it to the paying teller to hold, or sometimes would keep it myself.

Q. What do you mean by that?

(49) A. They would bring a bill—

Q. What was done with this? Give us exactly the whole transaction.

A. They would bring a bill with the stock, which I would hand over to the paying teller so he would have something to show for what he paid out. Sometimes I would hand him the certificate of stock and sometimes I would keep it myself. I can probably explain that in this way. I would sometimes be at leisure and I would go to work at once and transfer the stock to Mr. Singerly. If I was busy on something else, I would let it go with the bill to the paying teller.

Q. You would take the stock and keep it or else hand it to the paying teller.

A. Yes, sir.

Q. Where did the money come from which paid for this stock?

A. From the paying teller. He would give a bank due bill.

Q. Then when you held this stock, how did you hold it?

A. Probably I would just lay it on my desk with some other papers. It was not counted in as any money or anything of that kind.

Q. What was it counted as?

A. Nothing at all. I would merely lay the certificate on my desk. If I was not busy at the time I would make out a new certificate in the (50) name of Mr. Singerly. If I was busy probably I would hand it over to the paying teller and he would keep it with the bill at his desk.

Q. How would you account for the bank due bill that was issued for the purpose of paying for this stock?

A. The paying teller would have the auctioneer's bill and probably the certificate of stock, one or the other.

Q. Attached was the auctioneer's bill, was it?

A. I cannot answer that. He would either have the bill or the certificate of stock, one or the other. If I was not engaged at the time, the chances are I would just give the paying teller the bill and sit down and make out a new certificate of stock.

Q. When you held this stock what did the paying teller have for the purpose of showing why he had issued this bank due bill?

A. The receipted bill of the auctioneer.

Q. But then when he held the stock, he would hold the receipted bill and the stock together?

A. No; not necessarily; no. The stock would be sufficient.

Q. You cannot say what was done in these various cases which you are now referring to of the Carsons and Mrs. Brown?

A. No, sir.

Q. How was that transaction carried upon the books of the bank? (51)

A. The paying teller carried it in cash items.

Q. The paying teller carried it under the name of cash items?

A. Yes, sir. Miscellaneous items, not as part of his cash. It would not count as cash, as so much notes or gold or silver currency, but as miscellaneous or cash item.

Q. Can you tell us exactly how the paying teller or how you accounted for this purchase of stock upon the books of the bank?

A. I would have nothing to do with the carrying of the stock on the books of the bank. The paying teller would issue a due bill for

the stock purchased, and he would either have the stock or a receipted bill of the auctioneers to show what he had paid for it. That he would count in as a miscellaneous item or as a cash item. We would not count that in as currency, but just as a miscellaneous item. You will find on his book other cash items or miscellaneous items which would not count in as cash.

Q. How was it recorded on the books? Was it recorded on the books then as other cash items?

A. It was in his settlement book.

Q. In his settlement book as other cash items?

A. I cannot recall just the wording, but miscellaneous item probably.

Q. Miscellaneous cash items?

(52) A. As I say, I cannot recall the wording in his settlement book now. It has been a couple of years since that.

Q. About that?

A. Yes, sir. It was not counted in as part of his cash.

Q. When you say it was not, what do you mean?

A. I mean the certificate.

Q. Was not counted in by the paying teller or by you?

A. I had nothing to do with it. It was in making up the settlement he would pay out a due bill, which was the same thing as so much cash, and he had to have something to show for that in making up his settlement, and he would put thatdown, whatever it represented, as miscellaneous item, so as to make his cash balance.

Q. So as to make his cash balance he would put down miscellaneous items?

A. Whatever way he carried it on his book. I cannot say.

Q. Do you know that?

A. No. His settlement book would show that.

Q. Then you do not know how it was carried by him?

A. No. I do not think these questions are fair to me. What I mean to say is, I do not know what you are driving at. I am only trying to give you a truthful statement of the stock business and to show
(53) you that I individually had no interest in the matter whatever.

Q. You were merely acting as Mr. Singerly's agent?

A. That is it. When the paying teller would pay out a due bill he would keep this bill for the stock to show what he paid out until he got a check from the Chestnut Street Trust Company for that stock. There was no reason in the world why the stock was not transferred on the day of the delivery. There was no excuse for it. Unless you might put it as carelessness on my part, but just at that time, when

everything was topsy-turvy, as it were, Mr. Singerly trying to put this deal of his through, the stock was delayed longer that it should have been. But the stock was bought for Mr. Singerly and it was voted by Mr. Singerly at the last meeting of the stockholders, when they voted on going into liquidation.

Q. That was what date?

A. I could not give you the date, but it was after the bank had closed its doors.

Q. I want to know how this stock was carried on the books of the bank?

A. The only answer I could make is that it was carried as a miscellaneous item.

Q. Do you know it?

A. Yes, sir; he had to do that to balance his books. For instance, if the paying teller was charged this morning with one hundred thousand dollars, his cash balance represented that at the close of the day, if he had say ninety thousand dollars cash, this certificate, whatever it might (54) be, would make up the difference so as to make his books balance.

Q. How long was this particular stock carried in that way?

A. That I cannot answer. Much longer than it was customary to carry it. I think the stock was bought in November some time. I think it closed in December. It was carried for four or five weeks, I think.

Q. When you say that everything was topsy-turvy at that time, what do you mean by that?

A. Mr. Singerly was trying to put through that deal of his at that time.

Q. Was the bank solvent at that time?

A. I think the bank was declared to be solvent up to the morning it closed its doors. I think that was the decision of the Court.

Q. I am asking you whether you, from your knowledge of the accounts and the liabilities and the assets of the bank can say one way or the other whether it was solvent or insolvent?

A. I hold the bank was solvent.

Q. That is not what I asked you at all. I ask you whether you can tell from your knowledge of the debts and assets of that bank when it was or when it was not solvent? You individually. I am not asking what somebody told you or what you heard. I am asking you whether you individually can tell me from your knowledge of the assets and lia- (55) bilities of that bank when it was solvent or when it was insolvent?

A. If Mr. Singerly's indebtedness had been paid to the bank the bank at that time was solvent.

Q. If it had not been it was insolvent?

A. That, of course, remains to be determined, what the assets pan out.

Q. Do you know yourself one way or the other?

A Not positively; no.

Q. Do you know Mr. Singerly's condition of solvency or insolvency at that time?

A. Not any more than you do.

Q. I do not exactly understand the arrangements which you had with the Chestnut Street Trust Company. You told us that the general way was to hold it under the head of a miscellaneous item in the book of the paying teller of the bank until you had taken that stock to the Trust Company and had it transferred?

A. The Trust Company registered the bank stock.

Q. Then, as I understand it, the place to take that stock for the purpose of having it transferred was to the Chestnut Street Trust Company?

A. No, sir. The stock was transferred at the Chestnut Street Bank. The Chestnut Street Trust Company registered the bank's stock.

Q. The actual transfer was made in the bank and the registry of that transfer was made in the Trust Company?

(56) A. Yes, sir. They registered the bank's stock.

Q. Tell us exactly what was the duty of the Trust Company in making that registry. Take a supposed case of a man purchasing stock at the bank; what would he do with it in order to have it transferred?

A. The bank would transfer the stock and the stock would then be sent to the Chestnut Street Trust Company, and they would register the stock and transfer it again to the bank.

Q. Who was the officer of the Trust Company who had charge of the registration of the bank's stock?

A. The treasurer.

Q. Who was the officer of the bank who had charge of making the transfers?

A. The cashier always attended to the transfer of stock. The president and cashier both signed the certificates.

Q. Who actually made the transfer upon the books of the bank after a sale of stock had been made?

A. The cashier. That is, if he were there. It might be possible he was away sick or something.

Q. Did you then make the transfers whenever transfers were made of stock of the Chestnut Street National Bank?

A. I guess all of the transfers.

Q. Then they will be found always in your handwriting?

A. I think so. I guess in every case. (57)

Q. Then when you speak of the stock being held by the bank until it was given to the Trust Company, you mean by that it was held by the paying teller under the name of miscellaneous cash items?

A. Yes, sir.

Q. Except in those cases where you individually held the stock?

A. That had nothing to do with it.

Q. Why?

A. That is as far as the paying teller's settlements went.

Q. As far as the paying teller's settlement went, it was the same whether you held the stock or whether he held the stock?

A. Yes, sir. He either held the stock or received the bill. That was all he required; something to show for what he had paid out.

Q. Where did he keep this stock when he held it?

A. Among his other moneys, etc.

Q. And when you had borrowed the money from the Trust Company, then the money which was so borrowed was placed in the drawer of the paying teller?

A. Let me explain. When the stock was transferred on the books of the bank, after I had signed it, it was taken to Mr. Singerly for his signature as President. The stock was then delivered to the Chestnut Street Trust Company, who registered the stock. They at the (58) same time would make a loan to Mr. Singerly on that stock, and either give or send their check for the amount, which would be turned over to the paying teller. That check would go through his work charged off to the Trust Company account.

Q. Would he then substitute that check for the auctioneer's bill?

A. Yes, sir.

Q. Would that check be cashed?

A. No. It would be charged right up to the Trust Company's account. They kept an account with the bank.

Q. That part of the transaction, however, only happened after the transfer of the certificate of stock had been made?

A. Yes, sir.

Q. Until that had been done, the stock had been purchased by you on behalf of Mr. Singerly from the funds of the bank?

A. Yes, sir.

Re-Direct Examination.

By Mr. Barnes:

Q. But as I understand you, before the certificate of stock which was being held by the paying teller against the bank due bill was

transferred and a new certificate issued, it was held by the bank pay-
(59) ing teller as against the bank's due bill?

A. Yes, sir. That is, the certificate as it was delivered before the transfer. Of course on the immediate transfer we would get a check and substitute it.

Q. But pending the obtaining of the check, the paying teller held the certificate of stock with the power attached to transfer it as against the bank's due bill, which had been issued for the payment of the price of the stock?

A. That is right; yes, sir.

Q. When you speak of holding the stock, do you mean or do you not mean holding the certificate for the stock?

A. Holding the certificate.

Q. By whose direction, if you know, were the entries made by the paying teller against the bank due bill of the certificates of stock or the auctioneer's receipt for the payment of the price under miscellaneous cash?

A. He was not directed by any one to do it. The paying teller more or less at all times had probably a few items which he carried in his cash, sundry items, and that would be carried with the rest of them until he received the money for the stock.

Q. Such entries, then, are not permanent entries, as I understand you, but temporary ones?

A. Yes, sir.

(60) Q. How in the case of these entries of miscellaneous cash against these certificates of stock would these entries finally come off of the paying teller's books?

A. The moment he received the check for it.

Q. You spoke of Mr. Singerly's indebtedness to the bank. Can you tell me what that included, what character of transactions?

A. That would be hard to tell. We had his individual paper and we had other paper which they termed his allied interests.

Q. Did the latter include the Chestnut Street Trust Company?

A. No, sir.

Q. Did it or did it not include the amount paid for the purchase of this stock by you for Mr. Singerly's account?

A. That was considered an indebtedness of Mr. Singerly's.

Q. So that the amount for which the bank due bills were issued, and as against which the certificates of stock were held as miscellaneous cash pending their transfer, was an obligation of Mr. Singerly's to the bank?

A. Yes, sir. So considered. We had nothing in writing to show for it.

Re-Cross-Examination. (61)

By Mr. Biddle:

Q. The transactions of these purchases of stock were entered in but one book, were they not?

A. That is the paying teller's settlement book, you mean?

Q. Yes. That is a fact, is it not?

A. Yes, sir.

Q. You told Mr. Barnes just now that the paying teller did not do this at anybody's direction. Are you right as to that?

A. He was not directed to do it. I would get a bank due bill from him and hand him this certificate of stock or the auctioneer's bill, which he naturally understood he was to carry. I do not know as he was directed to do it. It was an understood thing.

Q. It was an understood thing between you and the paying teller. Is that what you mean?

A. I suppose you can consider it such. There was no talk or directions about doing it. I would just merely hand him the certificate of stock or receipted bills of the auctioneers on the bank due bill.

Q. Then you simply went to him, as I understood it, took him this bill with the stock and he handed you the due bill for the amount of the stock?

A. That is right.

Q. And then you took that due bill and handed it over to the person who had brought the stock? (62)

A. Yes, sir.

Q. Did you do that at the same time the stock was brought to you usually?

A. Yes, sir. The paying teller always had something to show.

Q. Did you always hand over this due bill to the man who brought you the certificate of stock?

A. I cannot answer that because it might be that the young man who brought the stock might go around to the paying teller's desk and get the due bill. It was done with my permission. I was cognizant of the transaction.

Q. Who knew of this purchase of the stock and the manner in which it was done?

A. That is a question I cannot answer. I want to answer it so it is satisfactory to you. Any one who is privileged to know; any officer of the bank or employe or anybody else.

Q. State from your own knowledge. If you do not know, do not

guess. I am asking you so far as you know who knew of that transaction?

A. Of these particular transactions?

Q. Yes.

A. Everybody was supposed to know.

(The counsel again calls the attention of the witness to his ques-
(63) tion, which is simply how many persons to his knowledge knew of this purchase of this stock and the manner in which it was done.)

A. I do not think that is fair. I do not think it is a fair question to put to me. I want to answer the questions so that Mr. Biddle can understand it.

Mr. Barnes: I think it is a fair question as Mr. Biddle has put it. He simply asked you how many persons or who knew of the purchase of the stock and the manner in which it was transferred.

The Witness: Speaking of it generally—

By Mr. Biddle:

Q. Do not speak generally.

A. The officers and directors of the bank would know.

Q. I ask you whether you can tell us who knew of these transactions which you have testified to?

A. The officers and directors of the bank.

Q. Then it was a bank transaction?

A. I do not regard it so.

Q. Was Mr. Singerly acting as the agent of the bank in purchasing this stock?

A. No, sir.

Q. Did the directors examine this book which was held by the paying teller in which he entered these transactions as miscellaneous cash?

A. The directors had not examined the bank at the time of the
(64) transaction of these occurrences. When they examined the bank they examined the book of the paying teller.

Q. When was that done?

A. The last examination by the directors?

Q. Yes.

A. I cannot recall the date, but not for several years. The directors had not examined the bank for several years.

Q. Then what officer of the bank had examined this book and known in that way of this transaction?

A. Not any that I know of.

Q. Had you told the directors, or had Mr. Singerly told the directors of these transactions with the Carsons or Mrs. Brown?

A. Not that I know of.

Q. Then what did you mean by saying that the directors and the whole bank knew of this transaction with Mrs. Brown and the Carsons?

A. Because the directors knew that Mr. Singerly was buying stock in that way.

Q. How do you know they knew?

A. The treasurer of the Chestnut Street Trust Company informed me that the directors had directed him—

(Mr. Biddle objected to the witness telling what anybody else told him, and asks that the last part of the witness' answer be stricken out, as it is not responsive to the question, as he was not asked what he was told.)

(Mr. Barnes replies that the witness having been on cross-examination (65) asked to state the grounds of his information, proceeded to state the same.)

The Witness (continuing)—to loan to Mr. Singerly on all stock of the Chestnut Street Bank bought by him.

(Objected to.)

By Mr. Biddle:

Q. That is to say, the directors of the Trust Company had directed him?

A. Had directed the treasurer to loan to Mr. Singerly on all stock purchased by him.

Q. Have you any personal knowledge that any one of the directors knew of these transactions with the Carsons or Mrs. Brown?

A. I do not suppose they would know the names, but they knew it was customary to buy the stock in that manner.

Q. Have you any personal knowledge of that fact, aside from what any person told you?

A. I have.

Q. Will you mention the name of any director who knew from you that this was being done?

A. I can give you the name of one, but he is dead; Mr. Van Schaik.

Q. Any other?

A. Mr. Cooper.

Q. Any other? Told by you I am now speaking of.

A. You want to know if the directors knew that Mr. Singerly was (66) purchasing stock in that manner. It was known to the board.

Q. Answer my question.

A. I cannot answer.

Q. You cannot answer as to any other?

A. Not now; no, sir.

Q. Can you tell me the names of any directors whom you know, or any officer whom you personally know to have examined or vouched the accounts of the paying teller at the time of these transactions?

A. No, sir.

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(67) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

April Session, 1898. No. 38.

SAME

vs.

ANNIE C. CARSON.

April Session, 1898. No. 39.

SAME

vs.

HAMPTON L. CARSON.

Philadelphia, April 10, 1900.

Present: Messrs. Biddle and Waters, for Plaintiff; R. C. Dale, Esq., for Defendant.

Before HON. GEORGE M. DALLAS, J.

THE COURT. Motion for non suit overruled.

DEFENDANTS' EVIDENCE.

HAMPTON L. CARSON, Sworn.

By Mr. Dale:

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. The other defendants, Susan and Annie C. Carson, are your sisters?

A. Yes, sir. (68)

Q. What has been your relation to the business affairs of your sisters?

A. They have always consulted me about the matter of their investments, or changing their investments.

Q. You have in matters of this character acted together?

A. Always.

Q. How did you and your sisters become the owners of those shares in the Chestnut Street Bank?

A. My uncle, Mr. Henry Carson, a gentleman over 80 years of age, died in July of 1896. He left a will by which he divided his estate among his nephews and nieces, and my sisters and myself occupied that relation towards him together with other cousins. Among the assets of his estate were some certificates of stock in the Chestnut Street National Bank. Mr. G. Assheton Carson, my first cousin, was the executor of my uncle Henry's estate. He cut up the number of shares belonging to Mr. Henry Carson's estate among the legatees, and in the allotment ten shares were placed in the name of each of us in that way. I think we received the certificates, as stated here, in September of 1897.

Q. Mr. G. Assheton Carson, who was on the stand yesterday and identified the receipts, was the executor, and is the gentleman whom you have just referred to?

A. Yes, sir.

Q. And he handed those certificates to you and your sisters?

A. Yes, sir. (69)

Q. After receiving those shares what dividends did you receive?

A. I am not certain about those. I think I received two, possibly three dividends. Two at least.

Q. Do you remember at what rate they were?

A. No, sir; I do not.

Q. They came at the interval of the regular bank dividend?

A. They were mailed by the ordinary check to the office.

Q. During all the time that you were a shareholder in that bank had you ever received any intimation or suggestion in any way or form as to the solvency of the bank?

A. I had not the slightest idea of any kind with regard to the bank. I never heard anything to question it. I knew nothing about it. I never made any inquiry and never received any information.

Q. What were the circumstances which induced you to offer those shares for sale?

A. I always had a feeling against holding stock in a national bank, largely I think owing to the fact that I practice pretty actively at the bar and have defended people, but I think that which called my attention specifically to it was the fact that I held a conversation with Mr. Rawhn, I think the president of the Bank of the Republic, which had been going out and winding up, and he stated that there was no
(70) money for the smaller banks and it was going out of business.

Q. Will you please state what the motive was which induced you to make this sale which you are about to refer to?

A. To make a change of investment, that is all.

Q. What did you do?

A. I consulted with my sisters and told them what I was going to do myself. They said they would do the same thing. I placed all the certificates in the hands of Townsend, Whelan & Co., with instructions to sell.

Q. Townsend, Whelan & Co. are what?

A. Brokers and bankers.

By Mr. Biddle:

Q. Can you tell us when that was?

A. I think that was in September, 1897, if I mistake not.

By Mr. Dale:

Q. The certificates which have been heretofore produced are the certificates which you held?

A. Yes, sir.

Q. Those powers of attorney which are with the certificates bear the signature of whom?

A. This one signed "Anna C. Carson" is signed by my eldest sister. This power of attorney signed by myself is my own signature, and I see my sister Susan Carson's signature on the back of the other certificate.

(71) Q. What did you do with the certificates and powers thus produced?

A. I delivered them to Townsend, Whelan & Co.

Q. When did you next hear of the matter? Did you attend any sale?

A. No, I was not present at the sale. I was informed by Townsend, Whelan & Co. of what had been done.

Q. What did you receive?

A. I received the money. I was informed it had been sold at $100

a share, and I received that amount less the commissions of the auctioneer and broker.

Q. One hundred dollars a share is the par value of the shares?

A. Yes, sir.

Q. How soon after that did you receive that, and from whom?

A. I received the money from Townsend, Whelen & Co. I think the sale took place, if I am not mistaken, somewhere about the 2d of December, and in a day or so after that I got the check.

Q. Which represented the par value of the shares, less the auctioneer's and broker's commission?

A. Yes, sir.

Q. Did you attend the sale?

A. No, I was not present at the sale.

Q. Had you any knowedge of who the purchaser was at that time?

A. Not at all.

Cross-Examined. (72)

By Mr. Biddle:

Q. You say you had a feeling against holding this stock by reason of the fact that you had represented a good many people who had held bank stock, and, as I understand you to mean, had defended this particular liability.

A. No, sir; I meant that I had been counsel in all that litigation arising out of the Keystone, Spring Garden and Phoenixville Banks and the Raymond Bank at Middleton, not suits on the civil side of the court, but where I had occasion to consider the Acts of Congress relating to national banks.

Q. What was it, then, that made you feel uneasy about holding bank stock?

A. I was not uneasy at all. I simply knew that there was a liability on national bank stocks, and I preferred not to hold it.

Q. You wanted to escape that liability?

A. I wanted to change my investment. I knew nothing about the liability on that stock.

Q. But you, knowing the liability of national bank stock, sought to escape it?

A. I preferred not to hold it; yes, sir.

Q. You preferred to get in some other security where there was no liability?

A. That is entirely right. (73)

Q. Did you notice anything about the reserve fund of the Chestnut Street National Bank about the time you made this sale?

A. No, I did not, but you checked me about what I was saying with regard to Mr. Rawhn.

Q. I wanted to know whether you had any knowledge.

A. Not the slightest.

Q. Not the slightest knowledge in regard to the reserve fund of the Chestnut Street National Bank?

A. No, sir.

Q. Whether it was falling below the amount required by law?

A. No, I had no personal observation of that kind at all. I had my attention called to that fact by a remark that was made, that the reserves of other banks, including the Chestnut, had fallen off.

Q. Then, that is what you mean in your affidavit of defence, is it, when you say that your attention was called to the fact that the published statement of the bank showed a lessening of their reserve?

A. That is it. Simply in talking about it. I do not want to get in on your objection at all, but it was all part of that conversation with Mr. Rawhn.

(74) Q. Then, as I understand it, some one called your attention to the fact that the reserve of this bank was falling below what was required by law?

A. I do not know that it was falling below that required by law, but it was a diminishing reserve. That fact was mentioned.

Q. Could you explain to the jury what that means, a diminishing reserve? What does that mean when you say that a bank has a diminishing reserve? Can you explain it to me and explain it to the jury?

A. I may or may not be right in my explanation. My understanding of it is that there is a certain amount reserved, which the bank is required under the Act of Congress to keep for the protection of depositors, and that that reserve must be kept up. I do not know what the percentage is, but the fact was mentioned that among other banks that were small, some were going out of business, that the reserve of the Chestnut Street Bank was diminishing.

Q. What does that indicate?

A. I should say, without knowing anything at all specially about this case, that it indicated that the reserve was being drawn on.

Q. What does that mean? What is the full significance of the fact that the bank's reserve is being drawn on? What do you mean by that?

(75) A. That they are not keeping on deposit the percentage of reserve funds which under the Act of Congress they are required to keep for the protection of their depositors.

Q. That they are not doing a good business? Is that it?

A. That might be the inference from it, but I had no apprehension. I had nothing at all in my mind whatever.

Q. Did you make any other inquiry about this bank after being told that?

A. Not until when the news of the failure of the bank came.

Q. Then I also understand you to say you told your sisters the same facts you knew?

A. I did. I would not get out without asking them to get out.

(It is admitted by Mr. Dale that the facts of Mr. Carson's sale are identical with those of the two other defendants.)

EDWARD L. MAGUIRE, Sworn.

By Mr. Dale:

Q. What is your business now?

A. I am in the stock brokerage business.

Q. With what firm?

A. Jamison Brothers & Co.

Q. What was your business in November and the early part of (76) December, 1896?

A. I was cashier for M. Thomas & Sons.

Q. What is the business of M. Thomas & Sons?

A. Auctioneers.

Q. Where do they hold their auctions?

A. That was in 1897. I am not sure whether it was in the Philadelphia Bourse or the Philadelphia Exchange.

Q. For many years it was at the old Exchange, Third and Walnut, and subsequently it was moved to the Bourse building?

A. Yes, sir.

(Witness is shown the three certificates for ten shares each in the names of the three defendants, together with the powers of attorney which have been identified.)

Q. Did you ever see those papers before?

A. I did.

Q. Under what circumstances?

A. They were delivered to me by Townsend, Whelan & Co., brokers, after we had sold thirty shares of Chestnut Street bank stock for them on their order.

Q. That is, after there had been a public auction sale of those shares these certificates were delivered to you by Townsend, Whelan & Co.?

A. They were.

A. What did they tell you to do with them?

A. They did not tell me to do anything.

(77) Q. What did you do with them?

A. I took the certificates and powers together with the bill to Mr. Steele, who was cashier of the Chestnut Street Bank, and who was the purchaser of these shares, delivered the certificates and the bill, received a bank due bill in payment of the bill, and at that time I said to Mr. Steele, "I wish you would be sure to transfer those shares at once."

Q. Where did that conversation take place between you and Mr. Steele?

A. In Mr. Steele's office in the bank.

Q. And you then and there handed him the certificates and powers?

A. I handed him the certificates and powers and received from him a bank due bill.

Q. You said Mr. Steele was the buyer?

A. Yes, sir.

Q. Do you know whether he bought it for himself or for others?

A. I have no method of knowing that.

Q. Was Mr. Steele a constant buyer of those certificates?

A. The only buyer we ever had.

Q. Your statement was that so far as the Chestnut Street Bank was concerned, the only person who ever appeared and bid for those shares at your auction was Mr. Steele?

A. Yes, sir.

(78) *Cross-Examined.*

By Mr. Biddle:

Q. Will you look at that bill and see if that was the bill for these thirty shares of stock?

(Bill dated December 2d, 1897, to Mr. William Steele for thirty shares of the National Bank stock shown witness.)

A. Yes, sir; it is.

Q. You have sold a good deal of the stock of the Chestnut Street National Bank to Mr. Steele?

A. Quite a good deal.

Q. Could you give us any idea how much?

A. I could not possibly without looking over the books.

Q. Can you not give us any idea at all?

A. I should suppose we had a score of transactions at least with him.

Q. Do you remember the date upon which you took this stock to Mr. Steele?

A. I think it was on the 3d of December, the day following our sale. That was the usual course of procedure.

Q. Do you remember the conversation you had with him on all this score of times that you went there with stock?

A. No, I do not.

Q. Can you recollect any conversation that you had with him in regard to this stock?

A. Yes, sir.

Q. How many conversations can you recollect in regard to the (79
stock?

A. I do not recollect any other conversation.

Q. Can you explain to us why you recall this one?

A. Yes, sir; because I saw Mr. Hampton L. Carson's name as the holder of one of these certificates, and I had for years had a very warm regard for Mr. Carson, and I took on myself the responsibility of asking Mr. Steele in this instance to please make sure that the transfer was made.

Q. Why did you think that was a kindness to Mr. Carson?

A. I thought because in selling bank stock it was very advisable for the seller to get it out of his or her name.

Q. You did not think that of any of your other customers?

A. Oh, yes; we always advised it if we were asked, invariably.

Q. But in this case you did not think that was advisable for any of your other customers? You only took that precaution with Mr. Carson?

A. Mr. Carson was not a customer of ours. Townsend, Whelan & Co. were our customers.

Q. You only took this precaution in the case of Mr. Carson?

A. That is the only one I remember.

Q. You delivered this stock then to Mr. Steel?

A. I did.

Q. Who was the purchaser?

A. Yes, sir.

By Mr. Dale: (80)

Q. Mr. Carson had not said anything to you with reference to this sale? It was a mere accident you noticed his name?

A. That was all.

Defendants' counsel offer in evidence the deposition of William Steel.

Defendants' counsel offer in evidence the three stock certificates which have heretofore been produced and identified, and also the three powers of attorney attached thereto.

Defendants rest.

REBUTTING EVIDENCE.

GEORGE H. EARLE, JR., affirmed.

By Mr. Biddle:

Q. What is your business?

A. I am Receiver of the Chestnut Street National Bank.

Mr. Dale: What do you propose to prove by this witness?

(81) Mr. Biddle: I propose to prove that at the time of the sale of this stock by the defendants, to wit, on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, when its doors were closed, and that Mr. Singerly, to whom the stock was sold, and to whom the stock was intended to be transferred was also insolvent.

(Objected to as immaterial unless it is proposed to follow this by proof that the defendants had knowledge of such insolvency. Objection sustained. Exception noted for plaintiff.)

Testimony closed.

The Court: I may as well state that counsel for plaintiff presented eight points. There is not among these points any brief request for binding instructions. The result of the whole, if affirmed, would, of course, be binding.

Mr. Biddle: I intended not to present these points until your Honor passed upon the first point, which was a request for binding instructions for plaintiff.

The Court: I do not propose to give that binding instruction. I am asked by defendants to instruct the jury that under all the evidence in the case the verdict should be for the defendants. I propose, unless otherwise instructed by counsel, to also deny that request, reserving the point whether that is any evidence to go to the jury in support of the plaintiff's claim.

EARLE, Receiver, (82)

vs.

CARSON.

Charge of Dallas, J.:

Gentlemen of the Jury: Under an agreement of counsel made to avoid a needless consumption of public time, you are engaged in the trial of three cases, but this need lead you into no confusion, because it is conceded upon both sides that the same evidence and the facts deducible from the evidence are determinative of all the cases. Though in the little that I will have to say to you I may speak of Mr. Carson alone, without specifically referring to his sisters, you will understand that in each instance my remarks apply to the cases against the two sisters respectively as well as to that which is against Mr. Carson personally and individually.

I have been asked by counsel for the plaintiff to charge you that under all the evidence in the case the verdict should be for the plaintiff. I decline to so charge you. The defendant, on the other hand, has asked me to charge that under all the evidence in the case the verdict should be for the defendant, and I decline also to charge that point, but reserve for consideration by the Court hereafter the question whether there is any evidence to go to the jury in support of the plaintiff's claim. (83)

This case has been presented both to the Court and to the jury, by counsel on each side, with marked ability and with commendable zeal. In their addresses to the jury both counsel perhaps have extended their remarks beyond the identical questions which, in the judgment of the Court, are involved in the issue being tried, but that is not unusual, and in this case, at least, is not censurable. But the province of the Court is to endeavor to call the attention of the jury to the very issue which they are to try, the very questions which are submitted to them, under the law as the Court understands it, and the function of the jury is to apply the facts as they find them from the evidence, to the law as the Court shall lay it down.

Some reference was made by counsel to the standing of Mr. Carson in the community, and the hardship that it would be to him to require him under the circumstances to meet the demand now made upon him; and, on the other hand, some reference has been made to the hardship that would fall upon the creditors of the Chestnut Street National Bank if the liability sought to be here enforced was not enforced by the Court and jury. But neither of these considerations should enter your minds in determining your verdict. Whatever Mr. Carson's reputation in this community may be, it is (84)

enough to say that both he and Mr. Earle, the Receiver, are to be considered just like any other citizens in a court of justice. They are entitled to the presumption, which under the evidence in this case enures to both, of being men of good character. You may assume that the Receiver of this bank has brought this action in perfect good faith, and in the belief that in doing so he was discharging the duty imposed upon him by the trust confided to him. On the other hand, you may assume that Mr. Carson, in defending it, believes himself to be discharging a duty due to himself and to his sisters. No question of a personal character ought to enter into your consideration.

Let us then look at the case without regard to the parties, or being in any manner a respecter of persons. The liability here sought to be enforced is a liability imposed by the law of the land. It is imposed by an enactment of Congress, which is in these words, so far
(85) as pertinent: "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares." The question therefore in this case is whether Mr. Carson was a stockholder at the time at which there is no question he must have been a stockholder in order that he should have incurred this statutory liability, and, as I have understood counsel, there is no question about that date, namely, that he must have been a stockholder, in order to have incurred this responsibility, upon December 22 or 23, 1897. I do not know that the particular day, the difference being only between two consecutive days, is important. There can be no doubt under the evidence that Mr. Carson, on or about September 29, 1896, did become a stockholder in the Chestnut Street National Bank. Under the will of a relative, an uncle, as I remember, thirty shares, the shares here in question, which up to that time had been owned by the uncle, and upon his death formed a portion of his estate, were divided by the executor of his will so that ten shares
(86) were placed in the name of Mr. Carson and ten in each of his sisters, and there is no question that they received the certificates for those shares and receipted for them. They became stockholders and accepted the position of stockholders, subject to all the liability which resulted from the acceptance of that position. The real question then is as to whether they divested themselves of that ownership of the stock, and divested themselves of it so that under the evidence and circumstances of this case the liability here sought to be fixed upon them ceased to exist. That is the single question in the case, and inasmuch as the plaintiff has presented several points for instruction by the Court to the jury, in addition to the one which I have passed upon, and as by answering those points I can say all that

I need say about the case, I will, to avoid useless repetition, say nothing more except in answering those points, and will ask your attention distinctly to what I shall say with respect to them as covering all the questions of the law that are necessary to be explained.

Turning then to the plaintiff's points, I am asked to instruct the jury:

"1. A registered stockholder is liable for assessments unless he can show he has made a valid sale of his stock and has done all that (87)
a reasonable man could do to have a transfer made upon the stock register."

I do not understand the counsel for the plaintiff to dispute that a valid sale was made, and would be glad to be interrupted if I am mistaken as to that.

Mr. Biddle: There is no question about the actual sale having taken place. Whether it was valid under the contention I have made to your Honor about the law, is another question. There was an actual sale. There is no dispute as to that.

The Court: Then I will say as to that point, that there was an actual sale, and if there be a question as to its validity it will be one I can better dispose of under some of the later points, and I will assume for the purposes of this point, without now deciding, that the sale was a valid one, so as to reach the second branch of the proposition involved in the point immediately under consideration. Assuming, then, a valid sale, I am asked to say that if the seller had not done all that a reasonable man could do to have a transfer made upon the stock register, he would remain liable. The point is stated perhaps too strongly in one word. I do not understand the law to require a man who makes a sale of his stock to do all that a (88)
reasonable man physically "*could*" do to see to its actual transfer on the books of the corporation. I do understand that the law requires that in order to be relieved of liability as a stockholder, a stockholder who makes sale of his stock shall and must do all, in order to escape liability, that a reasonable man might and would do who in good faith sold the stock and wished it to be transferred on the books of the company. Now, as to that point, if I have made myself clear in the abstract statement, I will refer to it more concretely. What appears from what I understand to be the undisputed evidence (but the jury may correct me if I am in error) is that Mr. Carson—and you will remember that in all these instances I am speaking for the sisters as well as for him, for what he did for himself he did for them and bound them—called upon a firm of brokers and employed them to sell the stock in question; that they, for a reason which the Court can readily understand, but which is not in evidence and therefore will not be stated, instead of selling it themselves took it to a firm of auctioneers, which firm, it appears from the testimony, had

sold other large numbers of shares of this stock at different times,
(89) and placed it in their hands for sale; that it was sold at public sale, and that Mr. Steel, who was then the cashier of the Chestnut Street National Bank, became the purchaser. There is evidence in his deposition, and so far as the Court can recall (but all these statements from the evidence are made with entire submission to the jury's better recollection) not disputed, that he purchased them not for himself, but for Mr. William M. Singerly, who was then President of the Chestnut Street National Bank. As Mr. Maguire, who was an employe of Thomas & Sons, the auctioneers, has testified, he took the certificates with the powers annexed, properly signed in blank, upon the same day, or more probably the following day, if the usual habit was pursued, to Mr. Steel. Now, Mr. Steel was the purchaser either for himself or for Mr. Singerly. If his deposition be not contradicted and is believed, he was the purchaser for Mr. Singerly. Mr. Maguire might have delivered those certificates to Mr. Steel as the purchaser merely, but Mr. Steel occupied a double position. He was both the purchaser, or the agent for the purchaser, as you may find the fact to be, and he was also the cashier of the bank, and the impression made upon my mind by the evidence is very clear (again submitting the correction of that impression to you) that the
(90) cashier was the officer who saw to the transfer of stock upon the books of the company, unless by reason of sickness or for some other reason, he happened to be absent from his post of duty. Mr. Maguire's testimony you will recall, but a single phrase from it I noted, and without confining your attention to that alone, I direct your memory to it. He said that upon taking these certificates to Mr. Steel, who was then in his office at the bank, he said, "I wish you would be sure to transfer these shares at once." Now, if you believe that Mr. Maguire used that language, or substantially that language, in speaking to Mr. Steel, he could not have been addressing him as purchaser merely. He must have been addressing him as an officer of the bank, who could do the thing which he was requested to do, to wit, be sure to transfer the shares at once. The evidence to which I have referred and which happens most to have struck my mind upon that subject, you will consider with any other evidence in the case which you may think pertinent upon the question, and then determine whether or not Mr. Carson in this case did all that a reasonable man would or might have done, in good faith desiring to have those shares transferred upon the books of the bank.

(91) I had better read the second and third points together, as they can best be considered together.

Second. I am asked to say to you, "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done; the seller of the stock is liable to creditors."

Third. "If you believe the delivery of this stock was made to Mr. Steel as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that he could have done to have the stock transferred and is therefore liable."

I have read those two points together, but really, in answering the first point I seem to have answered both of these. If you believe from the evidence that all that was done with that stock by the agent of Mr. Carson, and we may assume without pausing to consider, for the purposes of this case, that the auctioneers were the agents of Mr. Carson—if you believe that through them all was done that a reasonable man would have done to require the transfer, that they were not merely delivered to Mr. Steel as purchaser, but handed to him as cashier, with instructions to promptly see to their transfer on the books, then I answer both of these points by saying that all was done by Mr. Carson, either personally or through his agents, that a rea- (92)
sonable man would have done under the circumstances.

The plaintiff's fourth point is:

"It is not necessary that the defendant should have a knowledge of the fact that the bank was in difficulties when he sold his stock. He could not sell his stock, so as to escape liability, if he had any reason whatever, to make him feel that he was not safe and had better relieve himself from liability."

I cannot affirm that point in the language in which it is stated. I think you will recall that in their arguments counsel have taken a very different view of what is meant by the sort of apprehension of danger from holding the stock that would preclude a man from selling it so as to relieve him from liability. Mr. Carson's testimony, as I recollect it, and you will give such weight to it as you think it is entitled to, was, in substance, not that he had any special apprehension with respect to this bank, or that he conceived he had any ground for any special apprehension with respect to this bank. Amongst other things he said: "I had no apprehension whatever;" but that, it is due to the plaintiff to say, was stated in answer to a question which made the answer apply to this particular bank under the particular circumstances so (93)
far as known. I think (but what you think must control) from his evidence that he disclosed to this jury that he had the same sort of apprehension about holding this stock which he had derived from his uncle that other men might have about purchasing bank stock, namely, that such stock is liable to the double responsibility imposed by the Statute; not that he had any knowledge tending to make him apprehensive, or that he did in fact apprehend that this particular bank was in immediate danger of insolvency. The law, as the Court understands it and gives it to you, is this, that the stockholder in a

national bank, however he may have derived his stock, has in general a right to sell it, and if he is moved to sell it because he is unwilling to hold a stock to which such a liability may attach, that reason for selling is not one that prevents his being relieved by such a sale from the liability. But if his design, if his purpose is, with a distinct knowledge of impending insolvency of the bank, or if he has circumstances from which he infers that this liability is about to become a positive, fixed liability, and as a mere subterfuge, or not to use so strong a word, if for the purpose of escaping a fixed liability, which
(94) he perceives or has reason to suppose is about to occur, he relieves himself or seeks to relieve himself by a sale of his stock, the sale will not avail him. Now, having said this, I will re-read that point, because it seems to be quite an important one in the case. The point is: "It is not necessary that the defendant should have a knowledge of the fact that the bank was in difficulties when he sold his stock. He could not sell his stock so as to escape liability, if he had any reason whatever, to make him feel that he was not safe and had better relieve himself from liability."

I say I do not affirm that point, because in view of what I have said I do not understand the law to be that merely because he felt himself not safe in holding a stock of that character, would be a reason to prevent his selling it and relieving himself from future responsibility, unless his fear as to safety arose from a knowledge of facts that made him specially apprehensive with regard to the particular stock that he held.

The plaintiff's fifth point is:

"If the bank was insolvent when this stock was sold and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable and your verdict must be in favor of the plaintiff."

(95) That point is refused.

The plaintiff's remaining points will now be read and answered in their order.

"6. If you believe that the result of the sale of the stock of the defendant was to secure him the purchase money from the cash drawer of the bank whether he knew it or not, he does not come into a Court of equity with clean hands and is not entitled to equitable relief."

That point is declined.

"7. If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recover. The insolvency of the bank prevents a stockholder from selling his stock to escape liability."

That point, as stated, is denied.

"8. If the bank was insolvent when the stock in this case was sold,

(Copy.)

Number 464. 10 Shares.

THE CHESTNUT STREET NATIONAL BANK OF PHILADELPHIA.

This is to certify that Susan Carson entitled to ten shares of the Capital Stock of The Chestnut Street National Bank of Philadelphia.

Transferable only on the books of the said Bank. Philadelphia, Sept. 28, 1896.

WILLIAM M. SINGERLY,
President.

W. STEELE,
Cashier.

Registered this 29th day of Sept., '96, for ten shares Chestnut Street Trust and Saving Fund Co.

I. C. GARVERICK.

For value received I hereby sell, assign and transfer unto ten (10) shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint attorney, to transfer the said stock on the Books of the within named Company with full power of substitution in the premises.

Dated December 3, 1897.

SUSAN CARSON.

In presence of
CHARLES S. WHELEN.

Signature guaranteed by Townsend, Whelen & Co.

(Copy.)

Number 465. 10 Shares.

THE CHESTNUT STREET NATIONAL BANK OF PHILADELPHIA.

This is to certify that Hampton L. Carson entitled to ten shares of the Capital Stock of The Chestnut Street National Bank of Philadelphia.

Transferable only on the books of the said Bank. Philadelphia, Sept. 28, 1896.

WILLIAM M. SINGERLY,
President.

W. STEELE,
Cashier.

Registered this 29th day of Sept., '96, for ten shares Chestnut Street Trust and Saving Fund Co.

I. C. GARVERICK.

(Copy.)

Know all men by these presents, That I, Hampton L. Carson, for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto ten (10) shares of the Capital Stock of the Chestnut Street National Bank of Philadelphia, standing in my name on the books of Bank, and do hereby constitute and appoint true and lawful attorney, irrevocable, for and in name and stead, but to use, to sell, assign, transfer and set over, all or any part of the said Stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said attorney, or substitute or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 27th day of November, 1896.

HAMPTON L. CARSON. (Seal.)

Signature guaranteed by Townsend, Whelen & Co.

Sealed and delivered in the presence of
DAVID FALLOWAY.

then the liability of the defendant was fixed and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recover."

That point is denied.

Now I have answered all the points, and I believe in doing so I have done what I said I anticipated I would do. I have met all the questions of law really presented in the case. You will remember finally, as I said at the outset, that Mr. Carson was undoubtedly in September, (96) 1896, a stockholder in this bank. He continued to be such a stockholder down to the time of the sale by Thomas & Sons was actually made. Then the question arises, first, did he do all that a reasonable man, in good faith desirous to have his stock transferred on the books of the bank, would do to have that done? If you find that he did, then that point must of course be determined in his favor. If you find that he did not, your verdict will be for the plaintiff. Then, the other point is as to whether when he sold that stock he did it with knowledge of circumstances or of facts that induced or lead you to believe induced, him to sell that stock for the purpose of escaping a liability which he believed was impending or likely to occur with respect to the particular bank. If you find the first point in his favor and the point last spoken of in his favor, then your verdict should be for him, but if you find either of those points adversely to him your verdict should be for plaintiff.

Plaintiff's counsel excepts to the ruling of the Court on plaintiff's points.

And thereupon, the counsel for the said plaintiff did then and there (97) except to the aforesaid charge and opinion of the said Court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record:

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said Court, and requested the seal of the Judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid Judge at the request of the said counsel for the plaintiff did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 23d day of April, 1900.

GEO. M. DALLAS.

Endorsed: In the C. C. of the U. S. in and for the Eastern District of Pennsylvania. April Sessions, 1898. Nos. 37, 38, 39. Bill of Exceptions. Earle, Receiver, vs. Carson. Filed May 7, 1900, Samuel Bell, Clerk.

(98) April Sessions, 1898. No. 37.

EARLE, Rec'r,

vs.

SUSAN CARSON.

And now, to wit, on this 17th day of April, 1900, the plaintiff in the above entitled cause through his counsel moves for a rule for a new trial for the following reasons:

First. Because the learned Court erred in refusing to permit the plaintiff to show that at the time the stock of the defendant was sold the Chestnut Street National Bank was insolvent.

Second. Because the learned Court erred in refusing to allow the plaintiff to show that the person to whom the stock was sold by the defendant, was at the time insolvent and unable to respond to the assessment made upon the stock.

Third. Because the learned Court erred in refusing to affirm the second point submitted by the plaintiff, which was as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done; the seller of the stock is liable to the creditors."

Fourth. Because the learned Court erred in not affirming plaintiff's third point, to wit: "If you believe the delivery of this stock
(99) was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that he could have done to have the stock transferred and is therefore liable."

Fifth. Because the learned Court erred in refusing plaintiff's fifth point, which was as follows: "If the bank was insolvent when this stock was sold and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable and your verdict must be in favor of the plaintiff."

Sixth. Because the learned Court erred in declining plaintiff's sixth point, which is as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase money from the cash drawer of the bank, whether he knew it or not, he does not come into a Court of equity with clean hands, and is not entitled to equitable relief."

Seventh. Because the learned Court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recover. The insolvency of the bank prevents a stockholder from selling his stock to escape liability."

Eighth. Because the learned Court erred in denying plaintiff's (100)
eighth point which was as follows: "If the bank was insolvent when the stock in this case was sold then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recover."

Ninth. Because the verdict of the jury was contrary to the law.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff.

Endorsed: No. 37. April Session, 1898. Earle, Receiver, vs. Susan Carson. Motion for rule for a new trial. Waters, Biddle, Attys. for Plaintiff. Filed April 18, 1900, Samuel Bell, Clerk.

April Session, 1898. No. 37. (101)

EARLE, Rec'r,

vs.

SUSAN CARSON.

April Session, 1898. No. 38.

EARLE, Rec'r,

vs.

ANNIE C. CARSON.

April Session, 1898. No. 39.

EARLE, Rec'r,

vs.

HAMPTON L. CARSON.

And now, to wit, on this 12th day of April, 1900, in consequence of the sickness of the court stenographer who took the notes of testimony in the above cases, the Court hereby extends the time for the application for a new trial, and for an appeal in the above cases until the notes of testimony have been furnished, or a reasonable time, under the circumstances, shall have expired, and such reasonable time thereafter as may be necessary for making the application for a new trial and for perfecting the appeal.

GEO. M. DALLAS, J.

Agreed to. R. C. DALE, for Defts.

(102) Endorsed: Nos. 37, 38, 39. April Session, 1898. Earle, Rec'r, vs. Susan Carson. Earle, Rec'r, vs. Annie C. Carson. Earle, Rec'r, vs. Hampton L. Carson. Order and agreement to extend time for motion for a new trial, and appeal. Filed April 18, 1900, Samuel Bell, Clerk. Charles Biddle, Attorney for plaintiff.

(103) And afterwards, to wit, on the 7th day of May, 1900, came the parties aforesaid by their counsel aforesaid, and this cause being called for arguments on defendants' rule for new trial, and having been argued by counsel for the respective parties, and the Court not being fully advised in the premises takes further time for the consideration of the same.

And afterwards, to wit, on the 29th day of May, 1900, came the parties aforesaid by their counsel aforesaid, and the Court being fully advised in the premises renders the following order:

(104) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank,

vs.

SUSAN CARSON.

April Sessions, 1898. No. 38.

SAME

vs.

ANNIE C. CARSON.

April Sessions, 1898. No. 39.

SAME

vs.

HAMPTON L. CARSON.

In each of the above cases the plaintiff's rule for a new trial is discharged.

GEO. M. DALLAS, J.

Endorsed: 37, 38 and 39. April, 1898. Earle, Receiver, vs. Carsons. Order discharging rule for new trial. Filed May 29, 1900, Samuel Bell, Clerk, H. R.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (105)

April Sessions, 1898. No. 37.

GEORGE H. EARLE, Receiver,

vs.

SUSAN CARSON.

Samuel Bell, Esq., Clerk: Please enter judgment in favor of the defendant and against the plaintiff on the verdict in the above entitled case.

R. C. DALE.

Endorsed: U. S. C. C. April Sess., 1898. Earle, Jr., Rec., vs. Susan Carson. Order to enter judgment. R. C. Dale. Filed May 30, 1900, Samuel Bell, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (106)

IN ASSUMPSIT.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

To the Honorable the Judges of said Court:

George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, Pa., plaintiff in the above entitled cause, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 10th day of April, 1900, comes now, by Asa W. Waters, Esq., and Charles Biddle, Esq., his attorneys, and petitions said Court for an order allowing said plaintiff to prosecute a writ of error to the Honorable the United States Court of Appeals for the Third Circuit, under and according to the laws of the United States, in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this (107)

Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Third Circuit.

And your petitioner will ever pray.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff.

Allowed.

GEO. M. DALLAS, Cir. Judge.

Endorsed: In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Pa., Plaintiff, vs. Susan Carson, Defendant. No. 37, April Session, 1898. In assumpsit. Asa W. Waters, Charles Biddle, Attorneys for Plaintiff. Filed June 13, 1900, Samuel Bell, Clerk.

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(108) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN ASSUMPSIT.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

ASSIGNMENTS OF ERROR.

The plaintiff in error, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, upon behalf of the creditors of said bank, and by direction of the Comptroller of the Currency of the United States, by Asa W. Waters, Esq., and Charles Biddle, Esq., his attorneys, now comes and says that in the record and proceedings in the above entitled cause there is manifest error in this, to wit:

That the agreement as to facts and the matters therein contained, and the evidence produced at the trial of the aforesaid action, are not sufficient in law for the said defendant to have or maintain her aforesaid judgment against the said plaintiff.

There is also error in this, to wit: That by the record aforesaid it

appears that the verdict of the jury and the judgment aforesaid given was given for the said Susan Carson against the said George H. Earle, (109)
Jr., as receiver of the Chestnut Street National Bank, whereas by the law of the land the verdict of the jury and the judgment ought to have been given for the said George H. Earle, Jr., as receiver of the Chestnut Street National Bank, against the said Susan Carson, and the said George H. Earle, Jr., as receiver of the Chestnut Street National Bank, by his attorneys aforesaid, for a more particular assignment of errors in the proceedings and record aforesaid says:

First. The Court erred in refusing to allow the plaintiff to show that at the time of the sale of this stock by the defendant on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, 1897, when its doors were closed.

Second. The Court erred in refusing to allow the plaintiff to show that Mr. Singerly, to whom the defendant sold her stock, was insolvent.

Third. The Court erred in refusing to charge, that under all the evidence in the case the verdict should be for the plaintiff.

Fourth. The Court erred in not affirming the second point, submitted by the plaintiff, which is as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done. The seller of the stock is liable (110)
to creditors."

Fifth. The Court erred in not affirming plaintiff's third point to wit: "If you believe the delivery of stock was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that she could have done to have the stock transferred, and is, therefore, liable."

Sixth. The learned Court erred in refusing plaintiff's fifth point, which was as follows: "If the bank was insolvent when this stock was sold, and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable and your verdict must be in favor of the plaintiff."

Seventh. The Court erred in declining plaintiff's sixth point, which was as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase money from the cash drawer of the bank, whether she knew it or not, she does not come into a court of equity with clean hands, and is not entitled to equitable relief."

Eighth. The Court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recovery. The insolvency of (111)
the bank prevents a stockholder from selling his stock to escape liability."

Ninth. The Court erred in denying plaintiff's eighth point, which was as follows: "If the bank was insolvent when the stock in this case was sold, then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recovery."

Tenth. The learned Court erred in not ruling as a matter of law that a shareholder of a national banking association, under Sections 5151 and 5234 of the Revised Statutes of the United States is individually contractually responsible to pay the bank's contracts, debts and engagements, although he in good faith sold his shares at public auction, three weeks before the bank suspended payment of its obligations and closed its doors to business, if the bank at the time of such sale is in fact insolvent and the vendee and intended transferee is financially irresponsible to pay the bank's contracts, debts and engagements, as provided in the Revised Statutes aforesaid, and such selling shareholder is not released from his individual contractual liability by a delivery of his certificate and power to transfer same to the cashier of the bank with a request that the shares be transferred at once upon the
(112) books of the bank, although acting in good faith, if, at the time of such request for transfer, the bank is in fact insolvent and the intended transferee is financially irresponsible.

Eleventh. The learned Court erred in not ruling as a matter of law that the burden of proof is upon the defendant to show that everything was done by her "in such manner as may be prescribed in the by-laws or articles of association" pursuant to the provisions of Section 5139 of the Revised Statutes of the United States that careful, prudent business men could reasonably do in order to effect a transfer of their shares upon the books of the bank, and to this end the burden was upon her to either offer in evidence at the trial the by-laws or articles of association of the bank, or show that the bank had neither by-laws nor articles of association upon the subject.

Twelfth. The learned Court erred in not ruling that it is a legal presumption that defendant at the time of offering her shares for sale had notice and knowledge of the provisions of Section 5191 of the Revised Statutes of the United States and all other provisions of the National Bank Act then in force.

And the said George H. Earle, Jr., as receiver of the Chestnut Street
(113) National Bank, prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things to which he hath lost by occasion of said judgment, etc.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff in Error.

Endorsed: In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Pa., Plaintiff, vs. Susan Carson, Defendant. No. 37. April Session, 1898. In assumpsit. Assignments of Error. Asa W. Waters, Charles Biddle. Filed June 13, 1900, Samuel Bell, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA. (114)

IN ASSUMPSIT.

April Session, 1898. No. 37.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff,

vs.

SUSAN CARSON, Defendant.

Know all men by these presents: That we, George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, Pa., as principal, and The Finance Company of Philadelphia, Pa., as surety, are held and firmly bound unto Susan Carson, defendant above named, in the sum of five hundred dollars ($500) to be paid to the said Susan Carson, her executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 7th day of June, 1900.

Whereas, the above named plaintiff, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, has sued out a writ of error to the United States Circuit Court of Appeals for the Third Circuit to reverse the judgment in the above entitled cause by the Circuit Court of the United States for the Eastern District of Pennsylvania. (115

Now, therefore, the condition of this obligation is such that if the above named plaintiff, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, shall prosecute said writ to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

GEORGE H. EARLE, JR., (Seal)
As Receiver of the Chestnut Street National Bank.

THE FINANCE COMPANY OF PENNSYLVANIA,
By C. William Funk, Secretary. (Seal)
(Seal of Finance Co.)

I hereby agree to the above bond.

R. C. DALE, Attorney for Defendant.

Approved. GEO. M. DALLAS, J.

Endorsed: In the Circuit Court of the United States in and for the Eastern District of Pennsylvania. George H. Earle, Jr., receiver of the Chestnut Street National Bank of Philadelphia, Pa., vs. Susan Carson, Deft. No. 37, Aprl. Session, 1898. In assumpsit. Bond. Asa W. Waters, Charles Biddle, Attys. for Plaintiff. Filed June 13, 1900, Samuel Bell, Clerk.

(116) Whereas, the case of George H. Earle, Jr., receiver of the Chestnut Street National Bank, vs. Susan Carson, United States Circuit Court, April Sessions, 1898, No. 37; George H. Earle, Jr., receiver of the Chestnut Street National Bank , vs. Annie C. Carson, United States Circuit Court, April Sessions, 1898, No. 38; and George H. Earle, Jr., receiver of the Chestnut Street National Bank, vs. Hampton L. Carson, United States Circuit Court, April Sessions, 1898, No. 39, were tried together as one suit and a writ of error was subsequently taken for the purpose of determining the matters more particularly set forth in the assignment of error;

And whereas, It is the desire of all parties that a writ of error taken in one case shall be decisive of the merits of the other two cases;

Now this agreement witnesseth, That the undersigned, the counsel for the various parties in interest in the aforesaid recited cases, do hereby agree that the writ of error taken in any one of the said three cases, shall be conclusive in all matters in controversy in the other two cases, and shall have full force and effect as though a writ of error was taken in each case separately.

RICHARD C. DALE,

Atty. for Susan Carson, Annie C. Carson, Hampton L. Carson, Defendants.

CHARLES BIDDLE,

Atty. for Complainant.

June 13, 1900.

(117) Endorsed: U. S. C. C. No. 37. April Sessions, 1898. George H. Earle, Jr., Receiver of the Chestnut Street National Bank, vs. Susan Carson. Agreement of Counsel. Filed June 20, 1900, Samuel Bell, Clerk. H. R.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA. } *sct.* (118

I, Samuel Bell, Clerk of the Circuit Court of the United States of America, for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certify the foregoing to be a true, complete and faithful copy of the original pleas in proceedings in the case of George H. Earle, Jr., Receiver, vs. Susan Carson, No. 37, April Session, 1898, on file and now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 26th day of June, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fourth.

SAMUEL BELL,
Clerk of C. C.
Per George Brodbeck, Jr.

U. S. C. C. of A.

Session, 1900.

No. .

GEORGE H. EARLE, Receiver,

vs.

SUSAN CARSON.

It is hereby agreed between the undersigned counsel for the plaintiff and defendant, respectively, that the only exhibits offered in evidence at the trial which it is necessary to print are three certificates of stock with the accompanying powers of attorney of which copies are hereto annexed.

RICHARD C. DALE,
For Defendant.
CHARLES BIDDLE,
For Plaintiff.

(Copy.)

Number 463. 10 Shares.

THE CHESTNUT STREET NATIONAL BANK OF PHILADELPHIA.

This is to certify that Anne C. Carson entitled to ten shares of the Capital Stock of The Chestnut Street National Bank of Philadelphia.

Transferable only on the books of the said Bank. Philadelphia, Sept. 28, 1896.

WILLIAM M. SINGERLY,
President.

W. STEELE,
Cashier.

Registered this 29th day of Sept., '96, for ten shares Chestnut Street Trust and Saving Fund Co.

I. C. GARVERICK.

(Copy.)

Know all men by these presents, That I for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto ten (10) shares of the Capital Stock of the Chestnut Street National Bank, standing in my name on the books of the Bank and do hereby constitute and appoint true and lawful attorney, irrevocable, for and in name and stead, but to use, to sell, assign, transfer, and set over, all or any part of the said Stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that said attorney, or substitute or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the 2d day of December, 1897.

ANNIE C. CARSON. (Seal.)

Signature guaranteed by Townsend, Whelen & Co.

Sealed and delivered in the presence of
SUSAN CARSON.

And afterwards, to wit: on the twenty-fifth day of September, A. D. 1900, this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. George Gray, circuit judge, and Hon. Edward G. Bradford, and Hon. John B. McPherson, district judges, and being argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards, to wit: on the twelfth day of March, A. D. 1901, comes the parties aforesaid and the court now being fully advised in the premises renders the following opinion, to wit:

In the United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff in Error,
v.
SUSAN CARSON, Defendant in Error.
} No. 29.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Gray, circuit judge, and Bradford and McPherson, district judges.

MCPHERSON, *District Judge:*

This suit is brought by the receiver of an insolvent national bank to enforce the double liability of a shareholder. The bank was closed and the receiver was appointed on December 23, 1897, and upon that day the name of the defendant appeared upon the official list of shareholders as the owner of 10 shares of the capital stock. *Prima facie*, therefore, she was liable for the assessment that was afterwards levied by the Comptroller of the Currency; but she met this apparent liability (successfully, as the verdict shows) by offering evidence at the trial to prove that on December 2 she had sold her shares in good faith, without knowledge or suspicion that the bank was either then insolvent, or was likely to prove insolvent, and that she had done everything that was reasonably possible to procure a transfer of the shares on the books of the bank to the purchaser. Under several decisions of the Federal courts, if the evidence established these facts, a complete defence was presented to the receiver's claim; Whitney *v.* Butler, 118 U. S. 655, Richmond *v.* Irons, 121 U. S. 27, Earle *v.* Coyle, 97 Fed. 410, Mattison *v.* White, 176 U. S. 521. Recognizing the probability that the defence would be successful, the receiver attempted to reply to it by offering to prove in rebuttal, that the bank was insolvent on December 2 as well as on December 23, and that the purchaser of the shares was also insolvent at the time the sale was made to him. This evidence was objected to as immaterial unless the receiver should offer to follow it by proof that the defendant had knowledge of the insolvency of the bank and of

the insolvency of the purchaser; and, as the receiver was unable thus to follow the offer, the learned judge excluded the testimony. It should be noted, that neither in the court below, nor in this court, was it contended that the evidence was offered upon the question of the defendant's good faith. Her ignorance of the insolvency, and her good faith were conceded, and the receiver's purpose was merely to raise the question that is immediately to be stated and considered. Manifestly, if the evidence had been offered to affect the defendant's good faith, it would have been insufficient without other evidence from which her knowledge of the bank's insolvency might fairly be inferred.

It is the exclusion of this rebuttal testimony that is complained of under the only assignments of error that need be discussed. The question presented is this: In what sense does the double liability of a shareholder in a national bank become fixed when the bank becomes insolvent in fact? Is it either fixed absolutely, so that no transfer, in good faith or otherwise, to any purchaser whatever, can afterwards be made that will relieve the shareholder? Or is it so far fixed, that no valid transfer can be made, even in good faith, if the purchaser be insolvent? The plaintiff in error has referred us to cases decided in several States under their respective constitutions and statutes, that seem to support his contention concerning the nature, and time of maturity, of a shareholder's liability. These decisions hold that the liability is fixed, either absolutely or *sub modo*, by the fact of insolvency; but we do not discuss them, because the national banking act and the decisions of the Supreme Court of the United States have established a different rule in respect to shares in a national banking association. Sec. 5139 provides that such shares shall be transferred on the books of the bank as the by-laws may prescribe, and that "every person becoming a shareholder by such transfer, shall in proportion to his shares succeed to all the rights and liabilities of the prior holder of such shares." This provision has been so enlarged by the decisions already cited, that a shareholder is enabled to rid himself of his rights and liabilities by less than a transfer in fact. He will satisfy this section if he is able to prove that he sold in good faith, and that he did everything that was reasonably possible to procure the proper formal transfer on the books of the association. There is no restriction in the banking act forbidding transfer after the bank has become insolvent, or forbidding transfer to an insolvent person at any time; and if these restrictions on the right to sell are to be enforced, it is because they are imposed by the courts in obedience to considerations of public policy, or in accordance with the general principles of justice and fair dealing that are applied to test any given transaction, although no statute may have enacted these principles as rules of decision.

What answer then, do the principles of justice and fair dealing lead us to give to the question now before the court? We think the answer should be this: As Congress has imposed no restriction on the right to sell, and as the duty to transfer has been held to be fulfilled by a proper, even if an unsuccessful, effort to transfer, the seller

is bound simply to diligence, fairness and good faith in the transaction. He is not bound at his peril to know that the bank is insolvent, or that the proposed purchaser of his shares is insolvent. He is bound to take notice of any fact that may reasonably put him on inquiry concerning the insolvency of the bank or of the purchaser, and to use diligently the means of knowledge at his disposal. If he knows, or has reasonable ground to believe, that the bank is insolvent, it would be a fraud, if with intent to evade his own liability, he should sell his shares even to a solvent person; and both the receiver of the bank and the purchaser would find a court of equity ready to afford them proper redress. So also, if with similar knowledge of the bank's insolvency, or with reasonable ground for belief, a shareholder should sell to a person whom he knew to be insolvent, this would be presumably misconduct of the same nature. Such a sale could rarely withstand attack by, or on behalf of, the persons injured; for the apparent inference of intent to evade the statutory liability would almost inevitably be drawn. But, why should the unknown fact that the bank is insolvent destroy the statutory right of transfer, if the transfer is made in good faith? In our opinion, no principle of justice or fair dealing forbids such transfer, for by the very assumption the transfer is *bona fide* and in ignorance of the bank's insolvency, and the seller is therefore seeking no unfair personal advantage, but is merely exercising innocently an apparent statutory right.

Neither, as we think is the transfer under such circumstances forbidden by public policy. In the case of a transfer to a solvent purchaser, no consideration for the creditors of the bank demands that the sale be forbidden; for between two solvent persons, it is of no importance to the creditors upon which person the assessment may be levied. If the transfer be made to an insolvent person, then, although the transaction may be in good faith, no doubt the creditors of the bank are injured; but if it is sought to prevent the possibility of doing such an injury by a ruling that such transfers are invalid—and such a ruling must rest upon the ground of public policy, and not upon the ground that the ignorant and innocent shareholder has violated any principle of justice or fair dealing—we think it would be very difficult to apply the rule of policy consistently. The reason for such a decision could only be, that as the bank's creditors have, by the mere fact of the bank's insolvency, become entitled to enforce the double liability, a shareholder ought not to be allowed, even by an act done ignorantly and in good faith, to render a part of the creditors' security unavailable by a transfer to an insolvent person. We see no other ground on which the ruling could be sustained, and this ground seems to us unsatisfactory for the following reasons: First, the reason being that harm to the creditors should be prevented, an irresponsible shareholder ought to be permitted to transfer to another irresponsible person; for, in that event, the creditors would suffer no harm, and no reason would exist for restricting the statutory right to sell at will. Second; the reason, if sufficient, ought logically to be extended so as to strike down transfers to insolvent persons made while the bank was

solvent, as well as to be applied to transfers made after it had become insolvent; for the same harm is done to creditors in the one case as in the other, and in both cases a withdrawal of the statutory security ought, upon the assumption, to be prevented. Third; the rule would, or at least might, involve inquiry into the solvency of three persons, the seller, the purchaser, and the bank; and the inconvenience of such an inquiry in each of many possible suits is entitled to weight in determining the applicability of the rule. Fourth; in every litigated case, the question of the bank's solvency, at least, at a particular date before its doors were closed would be in issue; and as this question is one of fact for the determination of a jury, it is readily conceivable that, either because the amount of evidence was not the same in every case, or because different juries were disposed to take different views of the same facts, there would be conflicting verdicts concerning the bank's solvency at substantially the same instant of time. Fifth; to apply such a rule would, in the language of defendant's counsel, "introduce into all transactions an element of uncertainty; for every transaction would be subject to review, even though made in good faith, if it subsequently proved that at the date when the transfer was made the bank, if then liquidated, would have proved insolvent, and that the transferee, if called upon to pay at that day all his debts, would have been unable to respond."

To our minds, these are reasons enough for hesitating to adopt the rule that has been urged upon us. It has no authority to support it, if we except a dictum in Stuart *v.* Hayden, 169 U. S. 1. In that case, the principal point decided was, that a fraudulent transfer of shares, made after the seller knew of the bank's insolvency, and made also for the very purpose of evading the statutory liability, was invalid against the creditors of the bank; and that the receiver could pursue the seller as if the attempted sale had not been made. The learned justice who delivered the opinion of the court, after discussing and deciding this point, went on to say:

"If the bank be solvent at the time of the transfer, that is, able to meet its existing contracts, debts and engagements, the motive with which the transfer is made is of course immaterial. But if the bank be insolvent, the receiver may, at least, without suing the transferee and litigating the question of his liability, look to those stockholders who, knowing or having reason to know at the time that the bank was insolvent, got rid of their stock in order to escape the individual liability to which the statute subjected them. Whether—the bank being in fact insolvent—the transferrer is liable to be treated as a shareholder, in respect to its existing contracts, debts and engagements, if he believed in good faith at the time of transfer that the bank was solvent, is a question which, in the view we take of the present case, need not be discussed; *although he may be so treated, even when acting in good faith, if the transfer is to one who is financially irresponsible.*"

It is upon the italicised clause of this quotation that the plaintiff in error relies; but we think the clause is so obviously a remark by the way, that it cannot possibly be taken as a serious decision of a

point, which in the same breath the learned justice says "need not be discussed." It may also be true, that the language is to be understood in the sense suggested by the brief of defendant's counsel. The suggestion is in substance this: The clause merely means, that the seller may be treated as still a shareholder, if the transfer is to a person who is financially irresponsible. That is to say; from such a transfer the inference may be drawn, having due regard to the facts of the particular case, that the transaction was intended to be evasive; and in that event, the seller will continue to be a shareholder, even if he made a transfer out and out, with no secret arrangement that he was at some future time, or in some future contingency, to have the stock again, or to enjoy its profits—in other words, even if he made such a transfer as the English cases speak of as a transfer in good faith, the good faith consisting in the fact that the transfer is absolute and without reservation. Whether this suggestion be correct, we have no means of knowing. The language of the court however is certainly a dictum; and, if it means what the plaintiff in error declares it to mean, with great respect we must decline to follow it.

There is no need to discuss the assignments of error in detail. They present nothing that calls for further attention.

The judgment of the circuit court is affirmed.

Filed March 12, 1901.

In the United States Circuit Court of Appeals for the Third Circuit.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff in Error,
v.
SUSAN CARSON, Defendant in Error.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause having come on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, *and* was argued by counsel.

On consideration whereof; it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause, be, and the same is hereby affirmed with costs.

Philadelphia, March 14, 1901.

JOHN B. McPHERSON, *Judge.*

United States Circuit Court of Appeals for the Third Circuit, September Term, 1900.

GEORGE H. EARLE, JR., Receiver of the Chestnut Street National Bank, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error.
} No. 29.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

And now to wit this 28th day of March, A. D. 1901, it is ordered that mandate issue to the said circuit court of the United States for the eastern district of Pennsylvania in accordance with the opinion and judgment of this court in said cause.

GEO. M. DALLAS, *Cir. Judge.*

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Whereas, lately in the circuit court of the United States for the eastern district of Pennsylvania, before you, or some of you, in a cause between George H. Earle, Jr., receiver of the Chestnut Street National Bank, plaintiff in error, against Susan Carson, defendant in error, wherein the verdict of the jury and judgment of the said circuit court entered in said cause are in the following words, viz:

"And afterwards, to wit: on the 9th day of April, 1900, the jury being called come, to wit: John C. Rowland, Oliver P. Smith, Robert Depew, Jeremiah G. Barton, George Fritz, Harrison S. Peterbaugh, James B. McLean, J. H. Redsecker, Harry Rogers, Charles Esrey, Adolph H. Kretz, John H. La Rue, who are duly empanelled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit: on the 10th day of April, 1900, the jurors aforesaid upon their oaths or affirmation aforesaid, respectively do say that they find for defendant.

May 30, 1900.—Order to enter judgment filed. Judgment accordingly."

as by the inspection of the transcript of the record of the said circuit court, which was brought into the United States circuit court of appeals for the third circuit by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of September, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now ordered and adjudged by this court that the judgment of the said circuit court in this cause, be,

and the same is hereby affirmed with costs, and that the said defendant, Susan Carson, recover against the said plaintiff, George H. Earle, Jr., receiver of the Chestnut Street national bank, twenty dollars for her costs herein expended and have execution therefor.

Philadelphia, March 14, 1901.

[Endorsed:] U. S. circuit court of appeals, third circuit. No. 29, Sept. term, 1900. George H. Earle Jr., receiver, etc. plaintiff in error *vs.* Susan Carson defendant in error. Mandate.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 2nd day of April, in the year of our Lord one thousand nine hundred and one.

WM. H. MERRICK,
Clerk of the U. S. Circuit Court
of Appeals, Third Circuit.

Costs of Defendant in Error.

Attorney.....	$20.00
	$20.00

In the Supreme Court of the United States, October Term, 1900.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error.
} No. —.

Petition in Error.

To the honorable associate justice of the United States for the third circuit:

Your petitioner, George H. Earle, Jr., as receiver of the Chestnut Street National Bank, of Philadelphia, respectfully shows that on the 21st day of May, 1898, he brought an action of assumpsit against said Susan Carson, defendant in error, in the circuit court of the United States for the eastern district of Pennsylvania under written directions of the Comptroller of the Currency of the United States for the recovery of an assessment and interest duly levied by said comptroller amounting to more than the sum of one thousand dollars, besides costs, on certain shares of the capital stock of said bank appearing upon the books thereof at the time of its insolvency in the name of said Susan Carson.

That your petitioner upon the same day brought actions of assumpsit against Annie C. Carson and Hampton L. Carson respectively in the same court upon similar obligations and claiming from

each more than one thousand dollars besides costs, and by agreement between all parties thereto the said three actions of assumpsit involving similar issues of facts and law came on to be heard as one suit before said circuit court and a jury and on April 10, 1900, a verdict in favor of the defendants was returned by the jury, and on May 30, 1900 judgments were entered of record by said court upon said verdict in each of said actions and executions were awarded thereon and thereupon your petitioner being aggrieved by reason of said judgments against him and by direction of said Comptroller of the Currency caused a writ of error to issue to the United States circuit court of appeals for the third circuit praying that said judgments be reviewed and reversed and by stipulation entered of record between all parties to said three actions, the writs of error taken in any one is to be conclusive in all matters in controversy in the other two and shall have full force and effect as though writs of error were taken in each case separately, and pursuant to said agreement a writ of error was taken in the case against said Susan Carson, defendant in error.

Your petitioner says that said writ of error came on to be heard in the said United States circuit of appeals for the third circuit at the September 1900 term thereof, and said court on the 14th day of March 1901 affirmed the judgment of said circuit court in favor of Susan Carson, defendant in error, filed an opinion to that effect and directed a mandate to issue to said circuit court to proceed in accordance with said decision and order as will appear by reference to the record and proceedings in said cause.

Your petitioner says that he is aggrieved by reason of the judgment of said United States circuit court of appeals for the third circuit in the above-entitled action and he shows that said cause is not one in which the jurisdiction of the said circuit court or of the said circuit court of appeals is dependent entirely or at all upon the fact that the opposite parties to the suit are one of them an alien and the other a citizen of the United States, or one of them a citizen of one State and the other a citizen of a different State but is dependent on the fact that your petitioner as receiver of an insolvent national bank, by appointment of the Comptroller of the Currency with the approval of the Secretary of the Treasury under the laws *and*e and provided by the Congress of the United States is an officer and agent of the United States for the winding up of the affairs of said insolvent national bank, and this action is a suit of a civil nature arising under the laws of the United States; that said judgment of said circuit court of appeals is final but the jurisdiction thereof is not final and your petitioner, directed by the Comptroller of the Currency of the United States, so to do, claims the right to remove the aforesaid judgment of said circuit court of appeals affirming the judgment of said circuit court, to this honorable court for review, etc., by writ of error by authority of statutes of the United States (section 6, of the act of March 3, 1891 c. 517, 26 Stat. 826). All of which appears in the record of the proceedings in said case which is here*to* submitted.

Your petitioner further says that this petition for a writ of error

is not filed for purposes of delay but because he believes there is manifest error in the proceedings aforesaid:

Wherefore, your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States and for a citation and supersedeas, and he will ever pray, etc.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank of Philadelphia, Pennsylvania, Petitioner.
ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Petitioner.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

George H. Earle, Jr. being duly affirmed according to law declares and says that he was duly appointed receiver of said Chestnut Street National Bank of Philadelphia on or about January 29, 1898 by the Comptroller of the Currency of the United States under authority of the laws of the United States, and that as such receiver he is the petitioner in the foregoing petition and that the facts therein set forth are true to the best of his knowledge, information and belief.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this 2nd day of April A. D. 1901.

H. G. HART,
[SEAL.] *Notary Public.*

(Endorsed:) In the Supreme Court of the United States. October Term 1900. No. —. George H. Earle, Jr. as receiver of the Chestnut Street National Bank of Philadelphia, plaintiff in error, *vs.* Susan Carson, defendant in error. Petition in error. Asa W. Waters, Charles Biddle, attorneys pro petitioner. Philadelphia, Pa. Filed April 9, 1901. Wm. H. Merrick clerk.

In the Supreme Court of the United States, October Term, 1900.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error. } No. —.

Assignment of Errors.

Now comes George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, by Asa W. Waters, Esq., and Charles Biddle, Esq., his attorneys, and says that in the record of proceedings in the above-entitled action in the United States circuit court of appeals for the third circuit there is manifest error in this, to wit:

First. The plaintiff in error assigns as error the several errors set

out in the assignment of errors forming part of the record in the above-entitled action before said circuit of appeals, to wit:

1. The court erred in refusing to allow the plaintiff to show that at the time of the sale of this stock by the defendant on December 2, 1897, the bank was insolvent, and in the same condition that it was upon December 23, 1897, when its doors were closed. (See page 44 of printed Record.)

2. The court erred in refusing to allow the plaintiff to show that Mr. Singerly, to whom the defendant sold her stock was insolvent. (See page 44 of printed Record.)

3. The court erred in refusing to charge that under all the evidence in the case, the verdict should be for the plaintiff.

4. The court erred in not affirming the second point submitted by the plaintiff, which is as follows: "It is not sufficient if the buyer of the stock promised to make the transfer, if he fraudulently or negligently failed to have it done. The seller of the stock is liable to creditors."

5. The court erred in not affirming plaintiff's third point, to wit: "If you believe the delivery of stock was made to Mr. Steele as the agent for the purchaser and not as the cashier of the bank, the defendant did not do all that she could have done to have the stock transferred, and is, therefore, liable."

6. The learned court erred in refusing plaintiff's fifth point which was as follows: "If the bank was insolvent when this stock was sold, and the person to whom it was sold is for any reason unable to pay the assessment, the defendant is liable, and your verdict must be for the plaintiff." (See page 50 of printed Record.)

7. The court erred in declining plaintiff's sixth point which was as follows: "If you believe that the result of the sale of the stock of the defendant was to secure the purchase-money from the cash drawer of the bank, whether she knew it or not, she cannot even come into a court of equity with clean hands, and is not entitled to equitable Relief."

8. The court erred in denying plaintiff's seventh point, which was as follows: "If the bank was insolvent when the defendant's stock was sold, the plaintiff is entitled to recovery. The insolvency of the bank prevents a stockholder from selling his stock to escape liability." (See page 50 of printed Record.)

9. The court erred in denying plaintiff's eighth point, which was as follows: "If the bank was insolvent when the stock in this case was sold, then the liability of the defendant was fixed, and even if the stock was transferred it was a voidable sale as against creditors, and the plaintiff is entitled to recovery" (see page 50 of printed Record).

10. The learned court erred in not ruling as a matter of law, that a shareholder of a national banking association, under sections 5151 and 5234 of the Revised Statutes of the United States, is individually contractually responsible to pay the bank's contracts, debts and engagements, although he in good faith sold his shares at public auction three weeks before the bank suspended payment of its obligations and closed its doors to business, if the bank at the time of

such sale is in fact insolvent and the vendee and intended transferee is financially irresponsible to pay the bank's contracts, debts and engagements as provided in the Revised Statutes aforesaid, and such selling shareholder is not released from his individual contractual liability by a delivery of his certificate and power to transfer same to the cashier of the bank with a request that the shares be transferred at once upon the books of the bank, although acting in good faith, if, at the time of such request for transfer, the bank is in fact insolvent and the intended transferee is financially irresponsible.

11. The learned court erred in not ruling as a matter of law that the burden of proof is upon the defendant to show that everything was done by her "in such manner as may be prescribed in the by-laws or articles of association" pursuant to the provisions of section 5139 of the Revised Statutes of the United States that careful, prudent business men could reasonably do in order to effect a transfer of their shares upon the books of the bank, and to this end the burden was upon her to either offer in evidence at the trial the by-laws or articles of association of the bank, or show that the bank had neither by-laws nor articles of association upon the subject.

12. The learned court erred in not ruling that it is a legal presumption that defendant, at the time of offering her shares for sale, had notice and knowledge of the provisions of section 5191 of the Revised Statutes of the United States and all other provisions of the national bank act then in force.

Second. The said circuit court of appeals for the third circuit before which was heard the writ of error which brought up the record in this action from the circuit court of the United States for the eastern district of Pennsylvania to said circuit court of appeals erred in making its order on the 14th day of March 1901 affirming the judgment of the said circuit court and directing the mandate to issue to the said circuit court directing that court to proceed in accordance with the decision and order of said circuit court of appeals.

Third. That the learned circuit court of appeals for the third circuit erred in not making an order upon the law and evidence in the case reversing the judgment of said circuit court and directing the said circuit court to enter judgment as of March 14, 1901 for the plaintiff in error and against the said defendant in error, Susan Carson in the sum of one thousand one hundred seventy-five and $\frac{33}{100}$ dollars, besides costs, because,

(*a.*) That said Susan Carson had some notice through her brother before offering her stock for sale that the bank was in a failing condition, to wit, that its reserve fund was less than that required by law and it put her upon inquiry as to the true financial condition of the bank, and even if selling in good faith as between herself—a shareholder—and creditors both being innocent parties, she as a shareholder is liable and her sale of the shares to escape the liability of a shareholder.

(*b.*) That if the sale was made to William Steele, individually or to him as agent of William M. Singerly, the president of the bank, the delivery of the certificate of stock for transfer to him was not a

delivery to the bank. (See Record pages 4, 42, 43, testimony of Edward L. Maguire.)

(*c.*) That if the sale was made to William Steele as cashier of the bank, for the bank, the defendant in error had notice of its invalidity under section 5201 U. S. Rev. Stat. and the payment *of* her of a clearing-house due bill by the cashier, showing on its face that the funds paid were those of the bank put her upon inquiry as to the real purchaser. (See Record pages 23, 25, 27, testimony of William Steele.)

(*d.*) That no actual transfer was ever made upon the books of the bank of the shares from the name of the defendant in error, and the record does not show that the request, if made, was for a transfer in the manner prescribed by the by-laws or articles of association of the bank, as required by section 5139, U. S. Rev. Stat. No offer of the by-laws nor proof that the bank is without by-laws is in evidence.

Fourth. That the learned circuit court of appeals for the third circuit erred in not reversing the ruling of said circuit court upon exception noted for the plaintiff at the trial, wherein it refused to permit the plaintiff in error to show to the jury that the bank at the time of the sale of the shares by the defendant in error was in fact insolvent and in the same condition that it was on December 23, 1897, when its doors were closed, and that the liability to its creditors, as holders thereof, had become fixed and attached to her individually that she could not relieve herself therefrom by a sale, although made in good faith, if to one financially irresponsible, and that the intended transferee of the shares was in fact insolvent and unable to respond to the creditors of the bank for its contracts, debts and liabilities, and this he offered to prove. (See page 44, testimony of Geo. H. Earle, Jr.)

Fifth. That the circuit court of appeals for the third circuit erred in not sustaining the writ of error then before it and in not reversing the judgment entered in this action in said circuit court.

And said George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, the plaintiff in error prays that the judgment aforesaid entered herein in the circuit court of the United States for the eastern district of Pennsylvania, and the order entered herein as aforesaid by the United States circuit court of appeals for the third circuit and the judgment of affirmance to be entered in said circuit court upon said order of affirmance, *be* for the errors aforesaid, and for other errors in the record and proceedings aforesaid, be reversed, annulled and altogether held for naught, and that the plaintiff in error may be restored to all things which he hath lost by reason of said judgment and order.

ASA W. WATERS,
CHARLES BIDDLE,
Attorneys for Plaintiff in Error.

(Endorsed:) In the Supreme Court of the United States. October term 1900. No. —. George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, plaintiff in error,

vs. Susan Carson, defendant in error. Assignment of errors. Asa W. Waters, Charles Biddle, attorneys pro plaintiff in error. Philadelphia, Pa. Filed April 9, 1901. Wm. H. Merrick clerk.

In the Supreme Court of the United States, October Term, 1900.

GEORGE H. EARLE, JR., as Receiver of the Chestnut Street National Bank of Philadelphia, Plaintiff in Error,
vs.
SUSAN CARSON, Defendant in Error.
} No. —.

Bond for Costs.

Know all men by these presents, that we George H. Earle, Jr., as receiver of the Chestnut Street national bank, as principal and the Finance Company of Pennsylvania, a corporation under the laws of the Commonwealth of Pennsylvania, with its principal office in the city of Philadelphia, as surety, are held and firmly bound unto Susan Carson, defendant in error, above named, in the sum of five hundred dollars ($500) to be paid to the said Susan Carson her executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the first day of April 1901.

Whereas the above-named plaintiff in error, George H. Earle, Jr., as receiver of the Chestnut Street national bank, has sued out a writ of error to the Supreme Court of the United States to reverse the judgments in the above-entitled cause by the United States circuit court of appeals for the third circuit and the circuit court of the United States for the eastern district of Pennsylvania in the above-entitled cause.

Now therefore, the condition of this obligation is such that the above-named George H. Earle, Jr., as receiver of the Chestnut Street national bank shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE H. EARLE, JR., [SEAL.]
As Receiver of the Chestnut St. National Bank of Philadelphia.
THE FINANCE COMPANY OF PENNSYLVANIA,
By GEORGE H. EARLE, JR. [SEAL.]
Pl.

[Seal of Company.]

Attest: C. WILLIAM FUNK, *Secretary.*

Approved,

—— ——,
Attorney for Susan Carson.

Allowed,
GEORGE SHIRAS, JR.,
Justice of the Supreme Court of the United States.

(Endorsed:) In the Supreme Court of the United States. October term 1900. No. —. George H. Earle Jr., as receiver of the Chestnut Street National Bank of Philadelphia, plaintiff in error, *vs.* Susan Carson, defendant in error. Bond for costs.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals before you or some of you, between George H. Earle, Jr., receiver of the Chestnut Street national bank, plaintiff in error, and Susan Carson, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of April, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

To Susan Carson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the third circuit, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against

the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 8th day of April, in the year of our Lord one thousand nine hundred and one.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

I accept service of the within citation for the defendant in error.

RICHARD C. DALE.

April 9, 1901.

UNITED STATES OF AMERICA, *set:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing pages from one to eighty-nine inclusive to contain a full, true, complete and faithful copy of the original transcript of record and proceedings in the case wherein George H. Earle, Jr., as receiver of the Chestnut Street National Bank of Philadelphia, is plaintiff in error, and Susan Carson is defendant in error, on file and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twelfth day of April, in the year of our Lord one thousand nine hundred and one and of the Independence of the United States the one hundred and twenty-fifth.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No. 18,119 U. S. C. C. of appeals—3rd circuit. Term No. 299 George H. Earle Junior, receiver of the Chestnut Street national bank—plaintiff in error—*vs.* Susan Carson. Filed April 16th, 1901.